



1 obtaining the requested benefits. Shalala v. Schaefer, 509 U.S. 292 (1993). In this case,  
2 judgment was entered in plaintiff's favor and the matter remanded for an immediate award of  
3 benefits. Plaintiff thus is entitled to an award of fees under the EAJA. The court must allow the  
4 fee award unless it finds that the position of the United States was substantially justified. Flores  
5 v. Shalala, 49 F.3d 562, 568-69 (9th Cir. 1995).

6 The burden of establishing substantial justification is on the government. Gutierrez v.  
7 Barnhart, 274 F.3d 1255, 1258 (9th Cir. 2001). In Pierce v. Underwood, 487 U.S. 552 (1988), the  
8 Supreme Court defined "substantial justification" as 'justified in substance or in the main' -- that  
9 is, justified to a degree that could satisfy a reasonable person. That is no different from the  
10 'reasonable basis in both law and fact' formulation adopted by the Ninth Circuit and the vast  
11 majority of other Courts of Appeals that have addressed this issue. Id. at 565. A position does  
12 not have to be correct to be substantially justified. Id. at 566 n.2; see also Russell v. Sullivan, 930  
13 F.2d 1443, 1445 (9th Cir. 1991), receded from on other grounds, Sorenson v. Mink, 239 F.3d  
14 1140 (9th Cir. 2001); Lewis v. Barnhart, 281 F.3d 1081, 1083 (9th Cir. 2002).

15 In determining substantial justification, the court reviews both the underlying  
16 governmental action being defended in the litigation and the positions taken by the government in  
17 the litigation itself. Barry v. Bowen, 825 F.2d 1324, 1331 (9th Cir. 1987), disapproved on other  
18 grounds, In re Slimick, 928 F.2d 304 (9th Cir. 1990). Where the underlying government action  
19 was not substantially justified, it is unnecessary to determine whether the government's litigation  
20 position was substantially justified. Andrew v. Bowen, 837 F.2d 875, 880 (9th Cir. 1988).

21 Here, the court held that the ALJ erred when rejecting the opinions of plaintiff's treating  
22 rheumatologist that she was unable to sustained work at the sedentary level and further erred by  
23 not including mental limitations in the RFC finding. (ECF No. 27 at 11, 14.) The court found  
24 that the record was fully developed and a remand for further administrative proceedings would  
25 serve no purpose. (Id. at 14-16.) The court reversed the Commissioner's decision and remanded  
26 the matter for immediate award of benefits. (Id. at 16.)

27 Defendant contends the government's position was substantially justified. In support of  
28 this contention, defendant argues the same contentions submitted in support of the government's

1 cross-motion for summary judgment. Although defendant is correct that the government can lose  
2 on the merits and its position still be substantially justified for purposes of EAJA, having  
3 reviewed the record and argument in this case, and given the outcome of remand for benefits, the  
4 court finds that the position of the United States was not substantially justified. Fees under the  
5 EAJA will therefore be awarded.

6 B. Reasonable Fee

7 The EAJA directs the court to award a reasonable fee. In determining whether a fee is  
8 reasonable, the court considers the hours expended, the reasonable hourly rate, and the results  
9 obtained. See Commissioner, INS v. Jean, 496 U.S. 154 (1990); Hensley v. Eckerhart, 461 U.S.  
10 424 (1983); Atkins v. Apfel, 154 F.3d 986 (9th Cir. 1998). Here, plaintiff's counsel obtained a  
11 judgment in plaintiff's favor and a remand for an immediate award of benefits.

12 Defendant contends that plaintiff's billing was not adequately itemized and thus  
13 unreasonable. Plaintiff submitted a 44-page opening brief and a 4-page reply brief, based on  
14 review of a 2,395-page Administrative Transcript including a voluminous medical record. With  
15 respect to plaintiff's counsel's time reviewing the transcript, briefing on the motion for summary  
16 judgment and other tasks itemized in counsel's schedule of hours, the court has determined the  
17 hours claimed are reasonable. Plaintiff's counsel's tasks are adequately itemized. See ECF No.  
18 29-3. The rate claimed is also reasonable. Plaintiff will therefore be awarded the full amount  
19 requested. The EAJA award must be made by this court to plaintiff, and not to counsel. See  
20 Astrue v. Ratliff, \_\_\_ U.S. \_\_\_, 130 S. Ct. 2521 (2010).

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Plaintiff's motion for EAJA fees (ECF No. 29) is granted; and  
23 2. Fees pursuant to the EAJA are awarded to plaintiff in the amount of \$12,290.46.

24 Dated: October 13, 2020

25   
26 CAROLYN K. DELANEY  
27 UNITED STATES MAGISTRATE JUDGE

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