

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**TERESA JEAN BEAL,**

Plaintiff,

v.

CAROLYN W. COLVIN,
Acting Commissioner of Social Security

Defendant.

Case No. 14-cv-04437-YGR

**ORDER DENYING WITHOUT PREJUDICE
MOTION FOR ATTORNEY'S FEES**

Re: Dkt. No. 25

The Court granted in part summary judgment in favor of plaintiff and remanded the case for further administrative proceedings on November 10, 2015. (Dkt. No. 21.) Thereafter, the Court granted a stipulation “extend[ing]” plaintiff’s deadline to file an application for an award of attorney’s fees and costs under the Equal Access to Justice Act (“EAJA”) to February 29, 2016. (Dkt. No. 24.) On February 29, 2016, plaintiff filed said motion. (Dkt. No. 25.) In opposition thereto, defendant correctly noted that the motion was premature because there is not yet a final judgment in this action. (Dkt. No. 26.)

An EAJA fee application must be filed “within thirty days of final judgment in the action.” 28 U.S.C. § 2412(d)(1)(B). However, because a district court’s order remanding a social security case remains appealable for sixty days from the entry of judgment, the order does not become a “final judgment” until sixty days after the entry of judgment. See *Akopyan v. Barnhart*, 296 F.3d 852, 857 (9th Cir. 2002) (holding that the “time frame . . . to file his petition for attorneys’ fees began to run upon expiration of the 60 day appeal period.”). As judgment is being entered today, the government has 60 days to file its notice of appeal. Once that time period lapses, if no notice of appeal is filed, judgment becomes final, and plaintiff’s motion for fees is due within thirty days thereafter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Thus, the Court **DENIES WITHOUT PREJUDICE** plaintiff's motion for attorney's fees as premature. Plaintiff may refile the motion for attorneys' fees within 30 days of final judgment as noted above. However, the Court admonishes counsel to meet and confer prior to filing said motion pursuant to Civil Local Rule 54-5(a) and file the required declaration along with the motion pursuant to 54-5(b) to the extent the parties are not able to agree and stipulate to the requested fees.

This Order terminates Docket Number 25.

IT IS SO ORDERED.

Dated: March 29, 2016



YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE