

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
STEPHANIE A. GALLAGHER
UNITED STATES MAGISTRATE JUDGE

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October 23, 2018

LETTER TO COUNSEL

RE: Coreen I. T. v. Commissioner, Social Security Administration;
Civil No. PJM-17-2260

Dear Counsel:

On August 20, 2018, I issued a Report and Recommendations, recommending that this case be remanded to the Social Security Administration ("SSA") for further proceedings. [ECF No. 37]. On September 11, 2018, Plaintiff filed a motion for attorneys' fees and costs ("fee petition") under the Equal Access to Justice Act ("EAJA"). [ECF No. 38]. United States District Judge Peter J. Messitte issued an order adopting my Report and Recommendations on October 2, 2018. [ECF No. 44]. In the interim, the SSA filed a motion to strike Plaintiff's fee petition on the grounds that it had been filed prematurely. [ECF No. 40]. Plaintiff opposes the motion to strike. [ECF No. 43].

Plaintiff clearly filed her fee petition prematurely. The EAJA provides that a petition seeking an award of fees and expenses shall be filed "within thirty days of final judgment in the action." 28 U.S.C. Sec. 2412(d)(1)(B). In civil cases where the United States or its officer or agency is a party, appeals must be filed within 60 days of entry of judgment. Fed. R. App. Proc. 4(a). Here, Judge Messitte did not enter judgment until October 2, 2018, meaning that the SSA has until December 3, 2018 to file an appeal. Plaintiff's fee petition can properly be filed as of December 4, 2018.

Although the Fourth Circuit has not considered the issue, where fee petitions are prematurely filed, other courts have simply treated the petitions as if filed during the thirty-day period following the final decision. *See, e.g., Smith v. Comm'r, Soc. Sec. Admin.*, Civ. No. 1:06CV104, 2008 WL 892753, at *3-4 (collecting cases). Accordingly, unless the SSA files an appeal, Plaintiff's fee petition will be treated as if it had been filed on December 4, 2018, and the SSA's response will be due on or before **December 21, 2018**. The SSA's motion to strike [ECF No. 40] is hereby **DENIED**.

Despite the informal nature of this letter, it should be flagged as an opinion and docketed as an order.

Sincerely yours,

/s/

Stephanie A. Gallagher
United States Magistrate Judge