

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

CHERYL L. TYSON,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting  
Commissioner of the Social Security  
Administration,

Defendant.

8:13-CV-29

MEMORANDUM AND ORDER

This matter is before the Court upon Plaintiff's Motion for Award of Attorney Fees Pursuant to the Equal Access to Justice Act, [28 U.S.C. § 2412\(d\)](#) (filing [30](#)). The defendant has no objection to the awarding of fees and expenses in the amount of \$6,328.90, which represents 33.31 hours of work at \$190 per hour.<sup>1</sup>

The Court has determined that plaintiff was the prevailing party in this action, as the Commissioner's decision was reversed and the case was remanded to the Commissioner for calculation and award of benefits; that the application for fees was filed in a timely fashion;<sup>2</sup> and that the position of the Commissioner was not substantially justified because the administrative law judge did not afford controlling weight to the opinion of the plaintiff's treating psychiatrist. See [Koss v. Sullivan](#), 982 F.2d 1226 (8th Cir. 1993). Therefore, the plaintiff is entitled to an award of attorney fees.

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<sup>1</sup> The maximum hourly fee of \$125 specified in [28 U.S.C. § 2412\(d\)\(1\)\(D\)\(2\)\(A\)](#) was adjusted to account for inflation. See filings [30-1](#) and [30-3](#).

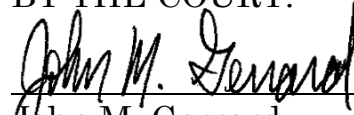
<sup>2</sup> An Equal Access to Justice Act application based on a district court judgment remanding a case pursuant to sentence four of [42 U.S.C. § 405\(g\)](#) must be filed no later than 30 days after the sentence four judgment has been entered and the appeal period has run such that the judgment is no longer appealable. See [Pottsmith v. Barnhart](#), 306 F.3d 526, 527-28 (8th Cir. 2002); see also, [Shalala v. Schaefer](#), 509 U.S. 292, 302 (1993); [Melkonyan v. Sullivan](#), 501 U.S. 89, 94-97 (1991).

IT IS ORDERED:

1. Plaintiff's Motion for Award of Attorney Fees Pursuant to the Equal Access to Justice Act, [28 U.S.C. § 2412\(d\)](#) (filing [30](#)) is granted.
2. By separate document, the Court shall enter judgment for plaintiff and against defendant providing that plaintiff is awarded attorney fees of \$6,328.90.

Dated this 9th day of July, 2014.

BY THE COURT:



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John M. Gerrard  
United States District Judge