

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

TERREL LEE BECKWITH,

Plaintiff,

vs.

ANDREW M. SAUL, Commissioner of  
Social Security,

Defendant.

8:19-CV-319

## MEMORANDUM AND ORDER

This matter is before the Court upon the plaintiff's Motion for Award of Attorney Fees Pursuant under the Equal Access to Justice Act, [28 U.S.C. § 2412\(d\)](#) ([filing 22](#)). The defendant has no objection to awarding of fees and expenses in the amount of \$7,500.00, which represents 37.5 hours of work at a rate of \$200.00 per hour.<sup>1</sup> [Filing 22-1](#).

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 further proceedings; 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

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

<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).

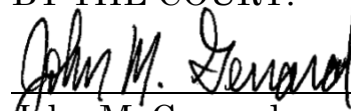
judge made findings that were not supported by substantial evidence. See *Koss v. Sullivan*, 982 F.2d 1226 (8th Cir. 1993). Therefore, the plaintiff is entitled to an award of attorney fees.

IT IS ORDERED:

1. The plaintiff's Motion for Award of Attorney Fees Pursuant under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) (filing 22) is granted.
2. By separate document, the Court shall enter judgment for the plaintiff and against the defendant providing that the plaintiff is awarded attorney fees of \$7,500.00.

Dated this 15th day of October, 2020.

BY THE COURT:



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John M. Gerrard  
Chief United States District Judge