

1
2
3
4
5
6
7
8

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Susanne Salvati-Bryant,

Plaintiff

v.

Nancy A. Berryhill, Acting Commissioner of
Social Security,

Defendant

Case No.: 2:17-cv-01406-JAD-CWH

**Order Granting Motion
for Attorney Fees**

[ECF No. 22]

9
10
11
12
13
14
15

Susanne Salvati-Bryant brought this action for judicial review of the Commissioner of Social Security's final decision denying her request for disability insurance benefits under 42 U.S.C. § 405(g).¹ On the parties' stipulation, I remanded the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g) with instructions to vacate the prior ruling and reconsider the disability claim.² Salvati-Bryant now moves for attorney fees and costs under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412.³ I grant Salvati-Bryant's motion and award her \$5,300 in fees and costs.

16
17

Discussion

18
19
20
21

The EAJA authorizes courts to "award to a prevailing party other than the United States fees and other expenses . . . incurred by that party in any civil action . . . unless the court finds that the position of the United States was substantially justified or that special circumstances

22
23

¹ ECF No. 22 at 2.

² ECF No. 19.

³ ECF No. 22.

1 make an award unjust.”⁴ The district court has discretion to award attorney fees under the EAJA
2 with no limit aside from a statutory hourly-rate cap.⁵

3 I find that Salvati-Bryant qualifies for attorney fees and costs under the EAJA because
4 she is the prevailing party, and I do not find special circumstances that would make an award
5 unjust⁶—indeed, her motion is unopposed. So I consider the reasonableness of her request using
6 the lodestar method.⁷ “To calculate the lodestar amount, the court multiplies ‘the number of
7 hours reasonably expended on the litigation . . . by a reasonable hourly rate.’”⁸ “Many district
8 courts have noted that twenty to forty hours is the range most often requested and granted in
9 social security cases.”⁹ But this range is not a “de facto policy,” and a “determination will
10 always depend on case-specific factors including, among others, the complexity of the legal
11 issues, the procedural history, the size of the record, and when counsel was retained.”¹⁰

12 The statutory cap for attorney fees under 28 U.S.C. § 2412(d)(2)(A) is adjusted for
13 inflation and is capped at \$196.79 per hour for work performed in 2017.¹¹ Salvati-Bryant’s
14 attorney requests an hourly rate of \$195.95,¹² which falls within the statutory cap. I find that

16 ⁴ 28 U.S.C. § 2412(d)(1)(A); *see also Corbin v. Apfel*, 149 F.3d 1051, 1053 (9th Cir. 1998);
Meier v. Colvin, 727 F.3d 867, 870 (9th Cir. 2013).

17 ⁵ 28 U.S.C. § 2412(d)(2)(A); *Sampson v. Chater*, 103 F.3d 918, 921 (9th Cir. 1996); *Atkins v.*
18 *Apfel*, 154 F.3d 986, 989 (9th Cir. 1998).

19 ⁶ *See Shalala v. Schaefer*, 509 U.S. 292, 300 (1993) (explaining that a party is the “prevailing
party” when a court grants a remand under sentence four of 42 U.S.C. § 405(g)).

20 ⁷ *Costa v. Comm’r of Social Security Admn.*, 690 F.3d 1132, 1135 (9th Cir. 2012).

21 ⁸ *Id.* (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)); *see also Stetson v. Grissom*, 821
F.3d 1157, 1166-67 (9th Cir. 2016).

22 ⁹ *Costa*, 690 F.3d at 1135.

¹⁰ *Id.*

23 ¹¹ https://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039.

¹² ECF No. 22 (Exhibit B).


1 26.2 hours is reasonable. Counsel successfully obtained a remand of the Commissioner's
2 decision denying Salvati-Bryant's benefits, but that agreement came only after counsel filed her
3 motion to remand. In light of the detailed remand motion and its successful effect, I find that
4 26.2 hours was a reasonable time expenditure in this case. So I award Salvati-Bryant \$4,900 in
5 fees.

6 Finally, 28 U.S.C. § 2412(a)(1) gives me the authority to award "a judgment for costs . . .
7 to the prevailing party in any civil action brought by or against the United States or any agency
8 or any official of the United States acting in his or her official capacity in any court having
9 jurisdiction of such action." Salvati-Bryant seeks \$400 for filing fees, mailing costs, and printing
10 and binding costs. I find these costs are awardable, and I also award Salvati-Bryant her \$400 in
11 costs.

12 Conclusion

13 Accordingly, with good cause appearing and no reason to delay, IT IS HEREBY
14 ORDERED that Salvati-Bryant's motion for attorney fees [ECF No. 22] is GRANTED.
15 The Clerk of Court is directed to enter judgment in favor of Salvati-Bryant and against the
16 Commissioner in the amount of \$5,300, less any applicable processing fees allowed by
17 statute.

18 DATED July 17, 2018.

19 
20 _____
U.S. District Judge Jennifer A. Dorsey