

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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DOUGLAS MARCOUX,	:	
	:	
Plaintiff,	:	
	:	18-CV-1641 (OTW)
-against-	:	
	:	
COMMISSIONER OF SOCIAL SECURITY,	:	
	:	<b><u>OPINION &amp; ORDER</u></b>
Defendant.	:	
	:	
	:	
	:	

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**ONA T. WANG, United States Magistrate Judge:**

**I. Introduction**

Plaintiff Douglas Marcoux brought this action seeking judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying him disability insurance benefits (“DIB”). On August 15, 2019, the Court granted Plaintiff’s motion for judgment on the pleadings, remanding the case to the Commissioner pursuant to 42 U.S.C. § 405(g). (ECF 42). Plaintiff now seeks an award of attorney’s fees under the Equal Access to Justice Act (“EAJA”). (ECF 46). For the reasons stated below, Plaintiff’s Motion is **GRANTED IN PART**, and Plaintiff shall be awarded \$6,627.60.<sup>1</sup>

**II. Facts and Procedural History**

On August 15, 2019, this Court issued an Opinion and Order granting Plaintiff’s motion for judgment on the pleadings and denied the Commission’s motion for judgment on the

<sup>1</sup> Twenty percent of past-due benefits, or \$33,138 x .20 = \$6,627.20.

pleadings. (ECF 42). Judgment was entered the following day. (ECF 43). In the Opinion and Order, the Court found that Administrative Law Judge (“ALJ”) Kieran McCormack failed to give appropriate weight to the opinion of Plaintiff’s treating physician, Dr. Lin. (ECF 42).

Plaintiff filed his motion for attorney’s fees pursuant to the EAJA on November 14, 2019. (ECF 46). The Commissioner filed an opposition on November 27, 2019. (ECF 49). Plaintiff filed his reply on December 4, 2019. (ECF 50).

### III. Legal Standard

The EAJA provides in pertinent part that:

Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(a).

Thus, the EAJA statute has four conditions that must be met for a plaintiff to receive fees:

(1) that the claimant be a “prevailing party”; (2) that the Government’s position was not “substantially justified”; (3) that no “special circumstances make an award unjust”; and, (4) pursuant to 28 U.S.C. § 2412(d)(1)(B), that any fee application be submitted to the court within 30 days of final judgment in the action and be supported by an itemized statement.

*Comm’r, INS v. Jean*, 496 U.S. 154, 158 (1990); *see also Gomez-Belano v. Holder*, 644 F.3d 139, 144 (2d Cir. 2011).

If plaintiffs are entitled to attorney's fees under the EAJA, the scope of the award must be determined. The EAJA provides that the fees awarded

"shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States; and (ii) attorney fees shall not be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee."

28 U.S.C. § 2412(d)(2)(A).

#### **IV. Application**

##### **1. Prevailing Party**

"[S]tatus as a prevailing party is conferred whenever there is a 'court ordered chang[e][in] the legal relationship between [the plaintiff] and the defendant' or a 'material alteration of the legal relationship of the parties.'" *Vacchio v. Ashcroft*, 404 F.3d 664, 674 (2d Cir. 2005) (citing *Preservation Coalition of Erie County v. Federal Transit Admin.*, 356 F.3d 444, 452 (2d Cir. 2004)). A litigant who has received a remand is a prevailing party. *See McKay v. Barnhart*, 327 F. Supp. 2d 263, 266-67 (S.D.N.Y. 2004) (finding that plaintiff whose social security case was remanded was the prevailing party) (citing *Shalala v. Schaefer*, 509 U.S. 292 (1993)). The Commissioner does not challenge that Plaintiff is the prevailing party. Because Plaintiff obtained remand, he is the prevailing party. (ECF 54 at 1).

##### **2. Substantial Justification**

The Commissioner "bears the burden of showing that [their] position was 'substantially justified,' which the Supreme Court has construed to mean 'justified to a degree that could satisfy a reasonable person.'" *Ericksson v. Comm'r of Soc. Sec.*, 557 F.3d 79, 81 (2d Cir. 2009)

(citing *Pierce v. Underwood*, 487 U.S. 552, 565 (1988)). To satisfy this burden the Commissioner must show they were “substantially justified” in their position or that “special circumstances make an award unjust,” and that their “action was justified to a degree that could satisfy a reasonable person,” thus showing substantial justification in “law and fact.” See *Healey v. Leavitt*, 485 F.3d 63, 67 (2d Cir. 2007). The Second Circuit has stated that the Government’s prelitigation conduct and litigation position must both be substantially justified. See *id.* “Being substantially justified is indeed a *higher standard* than having a reasonable position.” *Rocchio v. Comm’r of Soc. Sec.*, 08-CV-3796 (JPO), 2012 WL 3205056, at \*2 (S.D.N.Y. Aug.7, 2012) (quoting *Pierce*, 487 U.S. at 566 n.2 (“[O]ur analysis does not convert the statutory term ‘substantially justified’ into ‘reasonably justified’”).

The Commissioner does not argue that they met their burden of showing substantial justification in their past position or that special circumstances would make an award unjust. However, the Commissioner asserts that the time Plaintiff expended, 58.5 hours, is excessive and unreasonable for a Social Security matter. (ECF 49 at 1).

### **3. Reasonable Attorney’s Fees**

The Commissioner argues that under the EAJA Plaintiff’s requested fees should be reduced to fall between twenty and forty hours, the range that district courts within this circuit have consistently found to be reasonable for a Social Security disability case. (ECF 49 at 1).

#### **a. Rate of Fees**

Under the EAJA, a court shall award attorney’s fees and other expenses to a prevailing party at a rate not in excess of \$125 per hour, “unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the

proceedings involved, justifies a higher fee.” 28 U.S.C. § 2412(d)(2)(A). EAJA fees are determined by examining the amount of time expended on the litigation and the attorney's hourly rate, which is capped by statute. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002); 28 U.S.C. § 2412(d)(1)(A).

This Court has determined that a reasonable amount of time to spend on routine Social Security cases should be between twenty to forty hours. *See Borus v. Astrue*, 09-CV-4723 (PAC) (RLE), 2012 WL 4479006, at \*3 (S.D.N.Y. Sept. 28, 2012). When deciding the number of hours that are reasonable, the court should exclude hours that were not “reasonably expended” from the initial fee. *Hensley v. Eckerhart*, 461 U.S. 424, 434. Counsel for the prevailing party should make a “good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary.” *Id.* In awarding “reasonable attorney's fees,” a district court has broad discretion to determine the appropriate number of attorney hours reasonably expended in pursuing a claim. *Aston v. Secretary of Health and Human Services*, 808 F.2d 9, 11 (2d Cir.1986). The Second Circuit has stated that courts have “discretion simply to deduct a reasonable percentage of the number of hours claimed as a practical means of trimming fat from a fee application.” *Kirsch v. Fleet St., Ltd.*, 148 F.3d 149, 173 (2d Cir. 1998) (internal citations and quotations omitted).

Here, Plaintiff has alleged 62.5 hours expended on this case, including four hours for drafting and editing of the EAJA fees motion. (ECF 53 at Ex. 2). The Court agrees with the Commissioner’s consideration that Plaintiff’s time spent working on the EAJA fees motion is excessive and unreasonable, and the correct evaluation of Plaintiff’s time expended on this matter should begin at a baseline of 58.5 hours. Plaintiff alleges that this amount of time is

reasonable because counsel was unfamiliar with the records and lacked expertise in disability matters. (ECF 50 at 3). However, when determining whether an attorney's fee is reasonable, the standard requires courts to consider if the case presented "novel[]" questions or a particularly "complex legal issue." See *Hensley*, 461 U.S. at 430, n.3 (listing novelty and difficulty of the questions presented as one of the factors considered in evaluating whether the amount of attorney's fees requested is reasonable). Plaintiff does not present any serious arguments for their contention that lacking experience with the case's subject matter or being unfamiliar with the records is a reason to award additional hours in a standard social security matter. The Court accordingly reduces Plaintiff's requested 58.5 hours by forty percent, and finds that a reasonable number of hours expended on this case is 35.1 hours.<sup>2</sup>

The Social Security Administration withheld \$8,284.50,<sup>3</sup> which was twenty-five percent of Plaintiff's past due benefits. (ECF 54 at 1). For the judgment to not result in a windfall, attorney's fee must not exceed twenty-percent of past-due benefits. See *Wells v. Sullivan*, 907 F.2d 367, 370 (2d Cir. 1990). The Court asserts that twenty percent of past-due benefits is reasonable in this case, resulting in a total of \$6,627.60.<sup>4</sup>

#### **4. Award is Payable to Plaintiff**

Courts in this district generally award EAJA fees directly to the claimant, with the expectation the claimant will then abide by her obligations to compensate her lawyer. See *Finch v. Saul*, 17-CV-892 (OTW), 2020 WL 1940308, at \* 7 (S.D.N.Y. Apr. 22, 2020); see *Hogan v. Astrue*, 539 F.Supp. 2d 680, 683-84 (W.D.N.Y. Mar. 26, 2008) (noting "[D]istrict courts in this

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<sup>2</sup> Forty percent of 58.5 hours,  $58.5 \times .4 = 23.4$  ( $58.5 - 23.4 = 35.1$ ).

<sup>3</sup> Twenty-five percent of past-due benefits,  $\$33,138 \times .25 = \$8,284.50$ .

<sup>4</sup> Twenty percent of past-due benefits,  $\$33,138 \times .20 = \$6,627.20$ .

circuit which have had the occasion to examine the issue, however, have generally concluded that attorney's fees awarded under the EAJA are awarded against the federal government and paid directly to claimant [who] may then use any fees . . . awarded pursuant to EAJA to pay his counsel"). The Court finds that the EAJA award in this case is directly payable to Plaintiff.

**V. Conclusion**

For the reasons stated above, Plaintiff's motion for attorney's fees is **GRANTED**. Plaintiff is awarded **\$6,627.60** in attorney's fees.

The Clerk of Court is respectfully directed to close ECF Nos. 46 and 51.

**SO ORDERED.**

Dated: April 24, 2023  
New York, New York

*s/ Ona T. Wang*  
**Ona T. Wang**  
United States Magistrate Judge