

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

DIANA KRIEG,

Plaintiff,

Case No. 3:10-cv-950-HU

v.

OPINION AND ORDER

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

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SIMON, District Judge.

On April 4, 2012, Magistrate Judge Dennis Hubel filed Findings and a Recommendation (“F & R”) that Plaintiff’s motion for attorney’s fees under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412 be granted and that Plaintiff be awarded fees in the amount of \$4,558.78 (doc. # 25). No objections to the F & R have been filed.

Under the Federal Magistrates Act, the court may “accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If, however, no objections are filed, the Magistrates Act does not prescribe any standard of review. In such cases, “[t]here is no indication that Congress, in enacting [the Magistrates Act] intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Rule 72(b) of the Federal Rules of Civil Procedure recommend that “[w]hen no timely objection is filed,” the court

review the magistrate's findings and recommendations for "clear error on the face of the record."

No objections having been made, the court follows the recommendation of the Advisory Committee and reviews the F & R for clear error on the face of the record. No such error is apparent.

Accordingly, the court ADOPTS Judge Hubel's F & R (doc. # 25). Plaintiff is awarded fees under the EAJA in the amount of \$4,558.78.

IT IS SO ORDERED.

DATED this 7th day of May, 2012.



Michael H. Simon
United States District Judge