

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Gerald Kevin McWhorter,)	Civil Action No.: 3:11-185-MGL
)	
	Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
Michael J. Astrue,)	
Commissioner of Social Security,)	
)	
Defendant.)	

This matter is before the Court on Plaintiff’s motion for attorney’s fees and costs for the successful representation of the plaintiff by Hal W. Roach in the underlying Social Security benefits action. The Court may make such an award pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. §2412(d).

In his motion (ECF No. 49), the plaintiff requested an award of \$4,768.05 in attorney’s fees because he was the “prevailing party” and the “factual and legal positions taken by the Social Security Administration were not ‘substantially justified.’” (ECF No. 49-1 at 6). The defendant filed a response in opposition (ECF No. 50) stating that plaintiff’s request for fees should be denied because Defendant’s position in this case was substantially justified and had a reasonable basis in fact and law. The Defendant points out that the Magistrate Judge recommended that the Administrative Law Judge’s decision be affirmed. (ECF Nos. 41 and 50.) This Court, however, adopted the Report and Recommendation in part, and reversed and remanded the case for further administrative action. (ECF No. 47.) Plaintiff filed a Reply to Defendant’s Response. (ECF No. 51.)

The Equal Access to Justice Act provides attorney’s fees in actions where the government’s position is not substantially justified. The substantial justification test is one of reasonableness in law and fact. See *Pierce v. Underwood*, 487 U.S. 552, 565, 108 S.Ct.

2541, 101 L.Ed2d 490 (1988). Here, the government's position was not unjustified. The position espoused by the government was not without reason and was well-briefed and argued. Ultimately, however, this Court decided to reverse in part and remand the matter for further administrative action. Therefore, Plaintiff's motion for attorney's fees (ECF No. 49) is DENIED.

IT IS SO ORDERED.

s/Mary G. Lewis
United States District Judge

November 20, 2012
Spartanburg, South Carolina