

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

JOHNNY LAWSON PROCTOR,

Plaintiff,

vs.

**MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,**

Defendant.

Civil Action No: 3:11-2139-TLW

ORDER

On February 5, 2013, plaintiff filed a motion for attorney's fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, on the basis that the position taken by the defendant in this action was not substantially justified.. The motion seeks reimbursement for counsel's representation in the captioned matter in the amount of \$5,053.13 for fees and \$23.00 for costs and expenses. Defendant filed a response on February 21, 2013, contending that plaintiff's request for attorney fees should be denied because the government's position was substantially justified.

Under the EAJA, a court shall award attorney's fees to a prevailing party in certain civil actions against the United States unless it finds that the government's position was substantially justified or that special circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A). The standard to be applied in determining whether the Commissioner was "substantially justified" in terminating social security benefits, for purposes of determining whether award of attorney's fees under the EAJA is warranted, is whether there was arguably substantial evidence to support the Commissioner's position, not whether there was some evidence to support the position. Anderson v. Heckler, 756 F.2d 1011 (4th Cir. 1984). After careful consideration of the briefs

filed by the parties, the Court concludes that the position was not substantially justified.

Based on the foregoing and after considering the briefs and materials submitted by the parties, the court overrules the defendant's response opposing the plaintiff's motion for attorney fees. IT IS ORDERED that Plaintiff's motion for attorney's fees and costs, (Doc. # 34), pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, be granted in the amount of \$5,053.13 for fees and \$23.00 for costs and expenses.

s/Terry L. Wooten
TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE

February 26, 2013
Columbia, South Carolina