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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT SEATTLE

6 LEONARD CARTER,

7 Plaintiff,

8 v.

9 NANCY A. BERRYHILL, Acting  
10 Commissioner of the Social Security  
11 Administration,

12 Defendant.

C14-158 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable  
14 Thomas S. Zilly, United States District Judge:

15 (1) Plaintiff's supplemental motion for attorney's fees, docket no. 39, is  
16 GRANTED. Plaintiff seeks \$6,367.01 in fees under the Equal Access to Justice Act, 28  
17 U.S.C. § 2412(d), for his merits appeal to this court, and an additional \$5,423.94<sup>1</sup> in fees  
18 incurred in obtaining reversal of this Court's denial of plaintiff's motion for attorney's  
19 fees and preparing the supplemental briefing requested by the Court. The Commissioner  
20 argues for a 90% reduction in plaintiff's requested fee for the merits appeal based on  
21 plaintiff's limited success.<sup>2</sup> However, the Court is unconvinced that the success plaintiff  
22 achieved in this case is sufficiently limited to warrant any reduction of plaintiff's EAJA  
23 fee. Although plaintiff did not obtain a remand for an immediate award of benefits, this

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18 <sup>1</sup> Plaintiff's motion indicates that plaintiff requests \$6,604.34 for the merits appeal in this  
19 Court, and \$5,191.61 in fees incurred in the Ninth Circuit and in preparing a response as ordered  
20 by this Court. However, the time sheet submitted in connection with plaintiff's most recent  
21 request for fees, *see* docket no. 39-1, reflects that the fee amounts are actually \$6,367.01 and  
22 \$5,423.94 respectively.

23 <sup>2</sup> Although the Court allowed the Commissioner time to respond to plaintiff's request for  
his fees on appeal, Minute Order, docket no. 40, the Commissioner failed to do so. The Court  
construes this failure as an admission that plaintiff's request for an additional \$5,423.94 in  
attorney's fees has merit. *See* Local Civil Rule 7(b)(2). In any case, plaintiff prevailed on appeal  
and the Court is satisfied that these fees are reasonable in light of the success plaintiff achieved.

1 Court required the ALJ to “reevaluate the opinions of Dr. Hopfeneck and Dr. Czysz,  
2 develop the record as needed, and reassess Mr. Carter’s RFC and proceed to steps four  
3 and five as necessary.” *See* Report and Recommendations, docket no. 27 at 10. The  
4 Commissioner’s contention that plaintiff is “highly unlikely to ever prevail in his claim  
5 for benefits” is entirely speculative and provides no reasonable basis for reducing  
6 plaintiff’s fee award. Plaintiff was the prevailing party in a “proceeding[] for judicial  
7 review of agency action,” *see* 28 U.S.C. § 2412(d)(1)(A), and the 33.5 hours expended at  
8 the district court level is well within the average range for Social Security appeals, *see*,  
9 *e.g.*, *Patterson v. Apfel*, 99 F. Supp. 2d 1212, 1214 n. 2 (C.D. Cal. 2000) (collecting  
10 cases).

11 (2) Accordingly, it is hereby ORDERED that attorney’s fees in the amount of  
12 \$11,790.95, and expenses in the amount of \$397.00, for a total of \$12,187.95, shall be  
13 awarded to plaintiff. If it is determined that plaintiff’s EAJA fees are not subject to any  
14 offset allowed under the Department of the Treasury’s Offset Program, *see Astrue v.*  
15 *Ratliff*, 130 S. Ct. 221 (2010), then the check for EAJA fees shall be made payable to  
16 Christopher H. Dellert, based upon plaintiff’s assignment of this fee to his attorney. Any  
17 check for EAJA fees shall be mailed to plaintiff’s counsel, Christopher H. Dellert, at  
18 Dellert Baird Law Offices, PLLC, P.O. Box 97301, Lakewood, WA, 98497.

19 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of  
20 record.

21 Dated this 11th day of May, 2017.

22 William M. McCool  
23 Clerk

s/Karen Dews  
Deputy Clerk