

1  
2  
3  
4 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 JENNIFER E. MARTIN,

7 Plaintiff,

8 v.

9 NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,

10 Defendant.

Case No. 3:16-cv-05344-TLF

ORDER GRANTING IN PART  
PLAINTIFF'S MOTION FOR  
ATTORNEY FEES AND EXPENSES  
PURSUANT TO 28 U.S.C. § 2412

11 This matter is before the Court on Ms. Martin's motion for attorney fees and expenses  
12 pursuant to 28 U.S.C. § 2412, the Equal Access to Justice Act (EAJA). Dkt. 23. Plaintiff seeks  
13 \$10,282.29 in attorneys' fees for 51.6 hours of work performed by counsel (including paralegal  
14 time of 3.4 hours), and \$4.20 in expenses. Dkts. 23-4, 27. The Court grants the motion in part;  
15 the Court has determined the amount of attorneys' fees requested should be reduced by 10%,  
16 (\$1028.23) for a total fee award of \$9254.06, plus \$4.20 in expenses.

17 Plaintiff filed her motion for EAJA attorneys' fees and expenses after the Court reversed  
18 the Commissioner's denial of her applications for disability benefits and remanded the matter for  
19 further administrative proceedings. Dkt. 21. The Commissioner responded to the motion, urging  
20 the Court to reduce the dollars requested by 20%, because the number of hours Ms. Martin's  
21 counsel expended was allegedly unreasonable. Dkt. 26. As explained below, the Court agrees  
22 with the Commissioner that a reduction in fees is warranted, but the reduction should be 10%.

23 The EAJA provides:  
24

25 ORDER GRANTING IN PART PLAINTIFF'S MOTION  
FOR ATTORNEY FEES AND EXPENSES PURSUANT TO  
28 U.S.C. § 2412 - 1

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

9 28 U.S.C. § 2412(d)(1)(A). There are three requirements for an award of attorney fees under the  
10 EAJA: (1) the claimant is a “prevailing party”; (2) the government’s position was not  
11 “substantially justified”; and (3) no “special circumstances” exist that would make an award of  
12 attorney fees unjust. *Comm’r, Immigration and Naturalization Serv. v. Jean*, 496 U.S. 154, 158  
13 (1990).

14 Section 405(g) of Title 42 of the United States Code “authorizes district courts to review  
15 administrative decisions in Social Security benefit cases.” *Id.*, 296 F.3d at 854. Sentence four and  
16 sentence six of Section 405(g) “set forth the exclusive methods by which district courts may  
17 remand [a case] to the Commissioner.” *Id.* “The fourth sentence of § 405(g) authorizes a court to  
18 enter ‘a judgment affirming, modifying, or reversing the decision of the [Commissioner], with or  
19 without remanding the cause for a rehearing.’” *Melkonyan v. Sullivan*, 501 U.S. 89, 98 (1991);  
20 *see also Akopyan*, 296 F.3d at 854 (sentence four remand is “essentially a determination that the  
21 agency erred in some respect in reaching a decision to deny benefits.”). In Social Security  
22 disability cases, “[a] plaintiff who obtains a sentence four remand is considered a prevailing  
23 party for purposes of attorneys’ fees.” *Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002)  
24 (citing *Shalala v. Schaefer*, 509 U.S. 292, 301-02 (1993)). Such a plaintiff is considered a  
25 prevailing party even when the case is remanded for further administrative proceedings. *Id.*

Ms. Martin is a prevailing party because this case was remanded for further  
administrative proceedings. The Commissioner is not suggesting any special circumstances exist

1 that would make an award of attorneys' fees unjust. The only argument made by the  
2 Commissioner is that the amount of the requested attorneys' fees is unreasonable by 20%.

3 Before granting attorney fees under the EAJA, the Court must determine whether those  
4 fees are "reasonable." *Jean*, 496 U.S. at 161; 28 U.S.C. § 2412(d)(1)(A). The test used to  
5 determine what fees are reasonable was set forth in *Hensley v. Eckerhart*, 461 U.S. 424 (1983);  
6 *see also, Sorenson v. Mink*, 239 F.3d 1140, 1145 n.2 (9th Cir. 2001) (citing *Jean*, 496 U.S. at 161  
7 (once private litigant has met eligibility requirements for EAJA fees, court's task of determining  
8 what fee is reasonable is essentially same as that described in *Hensley*)); *see also Haworth v.*  
9 *State of Nevada*, 56 F.3d 1048, 1051 (9th Cir. 1995) (case law construing what is "reasonable"  
10 fee applies uniformly to all federal fee-shifting statutes) (quoting *City of Burlington v. Dague*,  
11 505 U.S. 557, 562, 112 S.Ct. 2638, 2641 (1992)).

12 In determining "the amount of a reasonable fee," the "most useful starting point" for the  
13 Court "is the number of hours reasonably expended on the litigation multiplied by a reasonable  
14 hourly rate." *Hensley*, 461 U.S. at 433. "The party seeking an award of fees should submit  
15 evidence supporting the hours worked and rates claimed." *Id.* "Where the documentation of  
16 hours is inadequate," the Court "may reduce the award accordingly." *Id.* Further, the Court  
17 "should exclude from this initial fee calculation hours that were not 'reasonably expended,'" and  
18 "[c]ounsel for the prevailing party should make a good faith effort to exclude from a fee request  
19 hours that are excessive, redundant, or otherwise unnecessary." *Id.* at 434. The court is not  
20 required to give a specific explanation if the reduction is 10% or less. *Costa v. Comm'r of Soc.*  
21 *Sec. Admin.*, 690 F.3d 1132, 1136 (9<sup>th</sup> Cir. 2012).

22 The Commissioner seeks a 20% reduction in the amount of attorney fees claimed in light  
23 of plaintiff's "underdeveloped arguments and unnecessary work." Dkt. 26, p. 2. Specifically, the  
24

1 Commissioner asserts such a reduction is appropriate because of conclusory argument and  
2 because two lawyers did work that appears to overlap. *Id.* at pp. 2-4. The Court agrees that these  
3 factors warrant a reduction in the amount of attorney fees awarded, yet a reduction of 10% is  
4 sufficient under these circumstances.

5 For example, in regard to Dr. Mayer's March 2012 opinion, plaintiff stated: "The ALJ's  
6 assertion is not supported by substantial evidence." Dkt. 14 at 6, ll. 14-15. This general  
7 statement, after a recitation of facts in the record, is merely a flat conclusion rather than a  
8 sophisticated argument applying law to facts. In addition, the plaintiff's attorney hired a different  
9 attorney to write a factual summary concerning the transcript and evidence and prepare a first  
10 draft of the brief. Yet plaintiff's attorney prepared his own chronological summary of evidence  
11 with separate citations to the record. Dkt. 23-2 at 2, ll. 5-19 (Mr. Eitan Yanich states that he  
12 reviews the evidence, drafts a chronological summary of important evidence with accurate  
13 citations, and drafts arguments that incorporate analysis of facts and evidentiary citations); Dkt.  
14 23-3 at 2-3 (Mr. Noah Yanich states that his role is limited to reviewing the file, summarizing  
15 evidence, analyzing evidence, and drafting a brief). The Court is not second-guessing plaintiff's  
16 counsel, and of course an attorney exercises independent professional judgment in determining  
17 the most effective way to handle an appeal. However, the hours spent by two attorneys to prepare  
18 separate summaries of the same set of facts would suggest that, at least to some extent, the  
19 lawyers have spent time on some of the same steps when reviewing the record and analyzing the  
20 facts. Counsel contends that there was no overlap whatsoever. Dkt. 23-2 at 2, ll. 7-8. The work  
21 product that is produced as part of the drafting process (for example, the summary of evidence  
22 produced by Mr. Noah Yanich, as opposed to the chronology and analysis of important evidence  
23 produced by the Mr. Eitan Yanich) resulting from the review of the record might not be exactly

1 the same, but the activity of conducting review of transcripts, documents, and evidence, done by  
2 two separate lawyers of the same record containing the same transcript, documents, and evidence  
3 is duplicative. Some of that time spend by two lawyers on the same tasks might be necessary, but  
4 this Court considers some of that time to be unwarranted because this is not an extraordinary or  
5 complex case.

6 Plaintiff is correct that “[b]y and large, the [district] court should defer to the winning  
7 lawyer’s professional judgment as to how much time he was required to spend on the case.” Dkt.  
8 27, p. 5 (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)). And as  
9 Plaintiff further notes, this Court has in the main been reluctant to second guess an attorney’s  
10 judgment in this regard. *See id.* (citing *Niemi v. Colvin*, Case No. 3:15-cv-05658-KLS, Dkt. 24  
11 (W.D. Wash. Oct. 18, 2016)). Here, conclusory argument and redundancy due to some overlap  
12 of two lawyers reviewing the same transcript, documents, and evidence warrants a 10%  
13 reduction of attorney fees.

14 Accordingly, the Court hereby Orders as follows:

15 (1) Plaintiff is granted attorney fees in the amount of \$9254.06<sup>1</sup> and expenses in the  
16 amount of \$4.20.

17 (2) Subject to any offset allowed under the Treasury Offset Program, as discussed in  
18 *Astrue v. Ratliff*, 560 U.S. 586 (2010), payment of this award shall be sent to  
19

---

20  
21 <sup>1</sup> This includes an additional 1.5 hours plaintiff’s counsel spent on work related to the attorney fees motion and reply  
22 brief, subject to the same 10% reduction discussed herein. *See* Dkt. 27, p. 6; *Jean*, 496 U.S. at 161-62 (stating that  
23 “absent unreasonably dilatory conduct by the prevailing party in ‘any portion’ of the litigation, which would justify  
24 denying fees for that portion, a fee award presumptively encompasses all aspects of the civil action,” and that “the  
EAJA – like other fee-shifting statutes – favors treating a case as an inclusive whole”) (citing *Sullivan v. Hudson*,  
490 U.S. 877, 888 (1989) (stating where administrative proceedings are “necessary to the attainment of the results  
Congress sought to promote by providing for fees, they should be considered part and parcel of the action for which  
fees may be awarded”).

1 attorney Eitan Kassel Yanich at his address: Law Office of Eitan Kassel Yanich,  
2 PLLC, 203 Fourth Avenue E., Suite 321, Olympia, WA 98501.

- 3 (3) After the Court issues this Order, defendant will consider the matter of plaintiff's  
4 assignment of EAJA fees and expenses to Ms. Martin's attorney. Pursuant to  
5 *Astrue v. Ratliff*, the ability to honor the assignment will depend on whether the  
6 EAJA fees and expenses are subject to any offset allowed under the Treasury  
7 Offset Program. Defendant agrees to contact the Department of Treasury after  
8 this Order is entered to determine whether the EAJA attorney fees and expenses  
9 are subject to any offset. If the EAJA attorney fees and expenses are not subject to  
10 any offset, those fees and expenses will be paid directly to plaintiff's attorney,  
11 either by direct deposit or by check payable to him and mailed to his address.

12 Dated this 17th day of August, 2017.

13  
14  
15 

16 Theresa L. Fricke  
17 Theresa L. Fricke  
18 United States Magistrate Judge  
19  
20  
21  
22  
23  
24