

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

**Melanie Smith v. Leland Dudek, Acting Commissioner of Social
Security**

Smith v. Dudek · No. 2:24-cv-01842-EFB · Decided May 12, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 MELANIE SMITH, No. 2:24-cv-01842-EFB 12 Plaintiff, 13 v. ORDER 14
LELAND DUDEK, ACTING COMMISSIONER OF SOCIAL 15 SECURITY, 16 Defendant. 17
18 Plaintiff Melanie Smith commenced this Social Security action on July 1, 2024. ECF No. 19 1.

On December 15, 2024, pursuant to the parties’ stipulation, the court entered an order 20
remanding the action for further administrative proceedings pursuant to sentence four of 42 21
U.S.C. § 405(g), and entered judgment for plaintiff. ECF Nos. 18, 19. Currently pending before 22
the court is plaintiff’s motion for an award of attorney fees under the Equal Access to Justice Act
23 (“EAJA”) in the amount of \$5,099.76.

ECF No. 21. Defendant filed a response to the motion, 24 indicating no opposition. ECF No. 22.
Having considered the motion, the record in this case, and 25 the applicable law, the court grants
the motion. 26 //// 27 //// 28 //// 1 I. Legal Standard 2 The EAJA provides that “a court shall award
to a prevailing party... fees and other 3 expenses... incurred by that party in any civil action...
brought by or against the United States.

4.. unless the court finds that the position of the United States was substantially justified or that 5
special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A); see also *Gisbrecht v. 6*
Barnhart, 535 U.S. 789, 796 (2002). 7 A “party” under the EAJA is defined as including “an
individual whose net worth did not 8 exceed \$2,000,000 at the time the civil action was filed.” 28
U.S.C. § 2412(d)(2)(B)(i).

A party 9 who obtains a remand in a Social Security case is a prevailing party for purposes of the
EAJA. 10 *Shalala v. Schaefer*, 509 U.S. 292, 300–01 (1993); see also *Gutierrez*, 274 F.3d at 1257
 (“An 11 applicant for disability benefits becomes a prevailing party for the purposes of the EAJA
if the 12 denial of her benefits is reversed and remanded regardless of whether disability benefits
13 ultimately are awarded.”).

14 The term “fees and other expenses” includes “reasonable attorney fees.” 28 U.S.C. § 15
2412(d)(2)(A). The reasonableness requirement allows the court “in its discretion, to reduce the 16

amount awarded to the prevailing party to the extent that the party ‘unduly and unreasonably 17 protracted’ the final resolution of the case.” *Atkins v. Apfel*, 154 F.3d 986, 987 (9th Cir.

1998) 18 (citing 28 U.S.C. §§ 2412(d)(1)(C) & 2412(d)(2)(D)). The plaintiff bears the burden to 19 demonstrate that the requested fees are reasonable. *Blum v. Stenson*, 465 U.S. 886, 897 (1984); 20 *Perez-Arellano v. Smith*, 279 F.3d 791, 793 (9th Cir. 2002).

In determining whether a fee is 21 reasonable, the court considers the reasonable hourly rate, the hours expended, and the results 22 obtained. See *Comm’r, INS v. Jean*, 496 U.S. 154, 163 (1990); *Hensley v. Eckerhart*, 461 U.S. 23 424, 437 (1983); *Atkins*, 154 F.3d at 988. 24 Finally, the statute precludes the award of fees and expenses if the position of the United 25 States had been substantially justified or that special circumstances exist to make an award unjust, 26 and the Government bears the burden of making this showing.

Gutierrez, 274 F.3d at 1258. 27 //// 28 //// 1 II. ANALYSIS 2 Plaintiff is entitled to an award of attorney fees under the EAJA. There is no dispute 3 plaintiff is the prevailing party in this litigation, given that the court remanded the matter for 4 further administrative proceedings. See *Gutierrez*, 274 F.3d at 1257.

The court previously found 5 plaintiff eligible to proceed in forma pauperis, satisfying the requirement that her net worth did 6 not exceed two million dollars when this action was filed. See 28 U.S.C. § 2412(d)(2)(B)(i). 7 Defendant has made no showing that its position was substantially justified or that special 8 circumstances render the award unjust. See ECF No. 22; *Gutierrez*, 274 F.3d at 1258; cf. *Sanchez* 9 v. *Berryhill*, No. 1:16-cv-01081-SKO, 2018 WL 509817, at *2 (E.D.

Cal. Jan. 23, 2018) (finding 10 position of the government was not substantially justified in view of the Commissioner’s assent to 11 remand); *Knyazhina v. Colvin*, No. 2:12-cv-2726 DAD, 2014 WL 5324302, at *1 (E.D. Cal. Oct. 12 17, 2014) (finding position of the government not substantially justified where the parties 13 stipulated to a remand of the action to the Commissioner for a new hearing).

14 The attorney fees plaintiff seeks are reasonable. See 28 U.S.C. § 2412(d)(2)(A); *Perez-* 15 *Arellano v. Smith*, 279 F.3d 791, 793 (9th Cir. 2002). Plaintiff seeks a total award of \$5,099.76, 16 reflecting 20.25 hours of attorney work at a rate of \$251.84. ECF No. 21 at 2-4.

The hourly rate 17 requested is reasonable. The EAJA provides that fee awards should be “based upon prevailing 18 market rates for the kind and quality of the services furnished,” and that “attorney fees shall not 19 be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of 20 living or a special factor... justifies a higher fee.” 28 U.S.C. § 2412(d) (2)(A).

The Ninth Circuit maintains a list of the statutory maximum hourly rates authorized by the EAJA, adjusted for increases in the cost of living, on the Court's website. See *Thangaraja v. Gonzales*, 428 F.3d 870, 876-77 (9th Cir. 2005); Statutory Maximum Rates Under the Equal Access to Justice, available at <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/> (last visited March 25, 2025).

Here, plaintiff requests an hourly rate of \$251.84, which is the Ninth Circuit's published maximum rate of for work performed in 2024. See 28 U.S.C. § 2412(d)(2)(A); *Thangaraja*, 428 F.3d at 876-77; Ninth Circuit Rule 39-1.6.

In light of the quality of services rendered by plaintiff's counsel given the complexity of the issues presented in this case, see ECF 1 No. 21 at 3-5; and defendant's lack of opposition, see ECF No. 22, the undersigned finds the requested rate to be reasonable. The attorney hours for which plaintiff requests fees are also reasonable. Plaintiff has tendered a declaration from counsel detailing his work over 20.25 hours and the work described therein, as well as the time claimed for it, fall well within the limit of what is considered a reasonable expenditure of time in similar cases.

See *Costa v. Comm'r of Soc. Sec. Admin.*, 690 F.3d 1132, 1136 (9th Cir. 2012) (noting "[m]any district courts have noted that twenty to forty hours is the range most often requested and granted in social security cases") (citing *Patterson v. Apfel*, 99 F. Supp. 2d 1212, 1214 n.2 (C.D. Cal. 2000) (collecting district court cases)); see, e.g., *Garcia v. Kijakazi*, No. 1:22-CV-00255-SKO, 2023 WL 4135221, at *2-3 (E.D.

Cal. June 22, 2023) (finding 41.1 attorney hours reasonable, where case was remanded pursuant to stipulation); *Thompson v. Colvin*, No. 2:12-cv-01850-AC, 2015 WL 1767733, at *2 (E.D. Cal. Apr. 16, 2015) (finding 63.4 hours to be reasonable); *Boulanger v. Astrue*, 2:07-cv-0849-DAD, 2011 WL 14 4971890, at *2 (E.D. Cal. Oct. 19, 2011) (finding 58 hours to be reasonable); *Valleyjo v. Astrue*, 15 No. 2:09-cv-03088 KJN, 2011 WL 4383636, at *5 (E.D.

Cal. Sept. 20, 2011) (finding 62.1 hours to be reasonable). Finally, the favorable results obtained for the plaintiff further renders reasonable the amount requested in attorney fees, as plaintiff obtained the remand she sought in her initial complaint. See ECF Nos. 1, 18, 19. 20 For these reasons, the court will award plaintiff EAJA fees in the amount of \$5,099.76.

21 Plaintiff's counsel requests payment be paid directly to him, pursuant to an assignment agreement with the plaintiff. ECF No. 21 at 1, 7 & n.1. Under the EAJA, however, an attorney fee award is payable to the litigant and is therefore subject to a government offset to satisfy any pre-existing debt owed to the United States by the claimant. *Astrue v. Ratliff*, 560 U.S. 586, 592-25 93 (2010).

Notwithstanding this, some courts have ordered payment of the award of EAJA fees 26 directly to plaintiff's counsel pursuant to plaintiff's assignment of EAJA fees, provided that the 27 plaintiff has no debt that requires offset. See *Garcia v. Kijakazi*, No. 121CV00427JLTBAM, 28 2022 WL 1538401, at *3 (E.D. Cal. May 16, 2022), report and recommendation adopted, No. 1 121CV00427JLTBAM, 2022 WL 2052692 (E.D.

Cal. June 7, 2022); *Blackwell v. Astrue*, No. 2 | CIV 08-1454 EFB, 2011 WL 1077765, at *5 (E.D. Cal. Mar. 21, 2011); *Dorrell v. Astrue*, No. 3 | CIV 09-0112 EFB, 2011 WL 976484, at *2-3 (E.D. Cal. Mar. 17, 2011); *Calderon v. Astrue*, No. 4 | 1:08-cv-01015 GSA, 2010 WL 4295583, at *8 (E.D. Cal. Oct. 22, 2010).

Accordingly, the court 5 || concludes that the EAJA fee award shall be made payable to plaintiff; if, however, plaintiff does 6 || not owe a government debt, then the order should not be construed to preclude the payment 7 || directly to plaintiff's counsel pursuant to plaintiff's assignment. 8 IH. CONCLUSION 9 Based on the foregoing, IT IS HEREBY ORDERED that: 10 1.

Plaintiff's motion for attorneys' fees and expenses under the EAJA (Doc. 21) is 11 | GRANTED; 12 2. Plaintiff is awarded fees in the total amount of \$5,099.76 pursuant to the EAJA; and 13 3. If the government determines that plaintiff does not owe a federal debt that qualifies for 14 | offset, then the fee award may be made payable to plaintiff's counsel pursuant to plaintiff's 15 || assignment of her interest in the fee award.

16 IT IS SO ORDERED. Fag PEE tn 18 || Dated: May 12, 2025 Za? ttle 7 ZHAN EDMUND F. BRENNAN 19 UNITED STATES MAGISTRATE JUDGE 20 21 22 23 24 25 26 27 28