

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Milavong v. Commissioner of Social Security

Milavong · No. 1:24-cv-00278-JLT-BAM · Decided July 2, 2025

SUMMARY

The document contains findings and recommendations concerning Plaintiff Samly Milavong’s motion for attorney’s fees under the Equal Access to Justice Act in a Social Security action. The court recommends granting the motion and awarding \$7,190.03 for 28.55 hours of work at an hourly rate of \$251.84. The award is payable to the plaintiff, subject to any government debt offset, with potential direct payment to counsel under the fee assignment if no offset applies.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	July 2, 2025
DOCKET	1:24-cv-00278-JLT-BAM
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for attorney's fees under the Equal Access to Justice Act after obtaining summary judgment and a sentence-four remand in a Social Security action. The magistrate judge issued findings and recommendations recommending that the motion be granted.
STANDARD OF REVIEW	The court evaluated prevailing-party status, substantial justification, timeliness, and reasonableness of the requested EAJA fees under 28 U.S.C. § 2412(d). It reviewed the requested hourly rate, hours expended, and results obtained for reasonableness.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- attorney fees
- judicial review of agency action
- administrative law
- remedies
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Plaintiff was entitled to attorney's fees under the Equal Access to Justice Act after obtaining a sentence-four remand in the Social Security action.
2. Whether the requested hourly rate and 28.55 hours of attorney time were reasonable.
3. Whether the EAJA award should be payable to Plaintiff, subject to any federal-government debt offset, rather than directly to Plaintiff's counsel.

HOLDINGS

1. A Social Security claimant who obtains a sentence-four remand is a prevailing party for purposes of the Equal Access to Justice Act, regardless of whether benefits are ultimately awarded.
2. The Commissioner did not establish that the government's position was substantially justified or that special circumstances made an EAJA award unjust.
3. The fee application was timely because it was filed within thirty days after the sentence-four judgment became final and nonappealable.
4. The requested \$7,190.03 award for 28.55 hours at an hourly rate of \$251.84 was reasonable.
5. An EAJA fee award is payable to the litigant and is subject to offset for any qualifying federal debt; if no debt exists, payment may be made directly to counsel under a valid assignment.

KEY QUOTATIONS

“An applicant for disability benefits becomes a prevailing party for the purposes of the EAJA if the denial of her benefits is reversed and remanded regardless of whether disability benefits ultimately are awarded.” (at 2)

“an attorney fee award under the EAJA 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.” (at 9)

FACTUAL BACKGROUND

Plaintiff prevailed in a Social Security action when the court granted summary judgment and remanded for further administrative proceedings under sentence four of 42 U.S.C. § 405(g). Plaintiff's counsel sought \$7,190.03 for 28.55 hours of work performed in 2024 and 2025 at an hourly rate of \$251.84. The Commissioner filed no opposition and did not contend that the government's position was substantially justified or that special circumstances made an award unjust.

PROCEDURAL HISTORY

Plaintiff commenced a Social Security action on March 6, 2024. On March 6, 2025, the court granted Plaintiff's motion for summary judgment, remanded for further administrative proceedings under sentence four of 42 U.S.C. § 405(g), and entered judgment. Plaintiff then moved for \$7,190.03 in EAJA fees. The Commissioner did not oppose the motion, and the magistrate judge recommended granting the motion and awarding the requested amount, subject to payment to Plaintiff and potential payment to counsel if no federal debt required offset.

DISPOSITION

other

REMAND INSTRUCTIONS

The recommendations were submitted to the assigned district judge for review under 28 U.S.C. § 636(b)(1). The parties were permitted fourteen days to file objections. The recommendation was to grant the EAJA motion, award \$7,190.03, and pay the award to Plaintiff, with payment to counsel permitted under the assignment if Plaintiff owed no federal debt requiring offset.

CASES CITED

- Gutierrez v. Barnhart, 274 F.3d 1255, 1257-58 (9th Cir. 2001)
- Nichols v. Dudek, No. 1:24-cv-00217-SKO, 2025 WL 1159062, at *1 (E.D. Cal. Apr. 18, 2025)
- Bell v. Commissioner of Social Security, No. 2:23-cv-2895-DMC, 2025 WL 1433854, at *2 (E.D. Cal. May 19, 2025)
- Melkonyan v. Sullivan, 501 U.S. 89, 102 (1991)
- Akopyan v. Barnhart, 296 F.3d 852, 854 (9th Cir. 2002)
- Perez-Arellano v. Smith, 279 F.3d 791, 793 (9th Cir. 2002)
- Blum v. Stenson, 465 U.S. 886, 897 (1984)
- Commissioner, INS v. Jean, 496 U.S. 154, 163 (1990)
- Hensley v. Eckerhart, 461 U.S. 424, 437 (1983)
- Atkins v. Apfel, 154 F.3d 986, 988 (9th Cir. 1998)
- Costa v. Commissioner of Social Security Administration, 690 F.3d 1132, 1136 (9th Cir. 2012)
- Moreno v. City of Sacramento, 534 F.3d 1106, 1112 (9th Cir. 2008)
- Thangaraja v. Gonzales, 428 F.3d 870, 876-77 (9th Cir. 2005)
- Sorenson v. Mink, 239 F.3d 1140, 1146 (9th Cir. 2001)
- Cunningham v. County of Los Angeles, 879 F.2d 481, 484 (9th Cir. 1988)
- Medina o/b/o I.I.M. v. Commissioner of Social Security, No. 1:21-cv-01441-AWI-SAB, 2022 WL 17986299, at *2 (E.D. Cal. Dec. 29, 2022)
- Mao v. Commissioner of Social Security, No. 1:20-cv-00006-HBK, 2022 WL 2110684, at *1 (E.D. Cal. June 10, 2022)
- Guzman v. Commissioner of Social Security, No. 2:20-CV-0468-KJN, 2021 WL 2534462, at *1 (E.D. Cal. June 21, 2021)
- Astrue v. Ratliff, 560 U.S. 586, 592-93 (2010)
- Blackwell v. Astrue, No. CIV 08-1454 EFB, 2011 WL 1077765, at *5 (E.D. Cal. Mar. 21, 2011)
- Dorrell v. Astrue, No. CIV 09-0112 EFB, 2011 WL 976484, at *2-3 (E.D. Cal. Mar. 17, 2011)
- Calderon v. Astrue, No. 1:08-cv-01015 GSA, 2010 WL 4295583, at *8 (E.D. Cal. Oct. 22, 2010)
- Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)

- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

(SS) Milavong v. Commissioner of Social Security

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 SAMLY MILAVONG, Case No. 1:24-cv-00278-JLT-BAM 12 Plaintiff, FINDINGS AND
RECOMMENDATIONS

REGARDING PLAINTIFF'S MOTION

13 v. FOR ATTORNEY'S FEES PURSUANT TO

THE EQUAL ACCESS TO JUSTICE ACT,

14 COMMISSIONER OF SOCIAL 28 U.S.C. § 2412

SECURITY,

15 (Doc. 23) Defendant. 16

17 I. INTRODUCTION

18 Plaintiff Samly Milavong, proceeding with counsel, commenced this Social Security 19 action
on March 6, 2024. (Doc. 1.) On March 6, 2025, the Court granted Plaintiff's motion for 20
summary judgment and remanded the action for further administrative proceedings pursuant to 21
sentence four of 42 U.S.C. § 405(g). (Doc. 21.) The Clerk of the Court entered judgment for 22
Plaintiff on the same date. (Doc. 22.) 23 On June 4, 2025, Plaintiff filed the instant motion for an
award of attorneys' fees under 24 the Equal Access to Justice Act ("EAJA") in the amount of
\$7,190.03 for 28.55 hours of work. 25 (Doc. 23-1 at 2.) On June 5, 2025, the Court encouraged the
parties to meet and confer to resolve 26 the motion without Court involvement, and ordered that
any opposition to the motion be filed no 27 later than June 25, 2025. (Doc. 24.) No opposition or
statement of non-opposition has been filed, 28 and the time in which to do so has passed. The
motion was referred to the undersigned pursuant 1 to Local Rule 302(c)(15) and 28 U.S.C. § 636.
2 Having considered the motion, the record in this case, and the applicable law, the Court 3 will
recommend that Plaintiff's motion for EAJA fees be granted.

4 II. DISCUSSION

5 A. Plaintiff is Entitled to EAJA Fees 6 The EAJA provides, in relevant part: 7 (A) Except as
otherwise specifically provided by statute, a court shall award to a prevailing party other than the
United States fees and other expenses, in addition 8 to any costs awarded pursuant to subsection
(a), incurred by that party in any civil action (other than cases sounding in tort), including
proceedings for judicial 9 review of agency action, brought by or against the United States in any
court having jurisdiction of that action, unless the court finds that the position of the 10 United
States was substantially justified or that special circumstances make an award unjust. 11 (B) A

party seeking an award of fees and other expenses shall, within thirty days 12 of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to 13 receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing 14 in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of 15 the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of 16 the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for 17 which fees and other expenses are sought. 18 (C) The court, in its discretion may reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the 19 course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy. 20 21 28 U.S.C. § 2412(d)(1)(A). 22 Here, the Court finds no dispute that Plaintiff is the prevailing party given that the Court 23 remanded the matter for further administrative proceedings. *Gutierrez v. Barnhart*, 274 F.3d 24 1255, 1257 (9th Cir. 2001) (“An applicant for disability benefits becomes a prevailing party for 25 the purposes of the EAJA if the denial of her benefits is reversed and remanded regardless of 26 whether disability benefits ultimately are awarded.”); *Nichols v. Dudek*, No. 1:24-cv-00217-SKO, 27 2025 WL 1159062, at *1 (E.D. Cal. Apr. 18, 2025) (“A party who obtains a remand in a Social 28 Security case is a prevailing party for purposes of the EAJA.”). The Court further finds, in view 1 of the Commissioner’s failure to oppose the motion, that the Commissioner has not met his 2 burden of showing that the position of the government was substantially justified. See *Bell v. 3 Comm’r of Soc. Sec.*, No. 2:23-cv-2895-DMC, 2025 WL 1433854, at *2 (E.D. Cal. May 19, 2025) 4 (concluding that Commissioner had not met his burden of showing that the government’s position 5 was substantially justified where Commissioner did not oppose motion for EAJA fees). Indeed, 6 the Commissioner has not responded to the motion and has not argued that the position of the 7 government was substantially justified or that special circumstances exist that make an award 8 unjust. *Gutierrez*, 274 F.3d at 1258 (“It is the government’s burden to show that its position was 9 substantially justified or that special circumstances exist to make an award [of EAJA fees] 10 unjust.”). Finally, the Court finds Plaintiff’s application for EAJA fees is timely because it was 11 filed within thirty days of final judgment in this action.¹ See *Melkonyan v. Sullivan*, 501 U.S. 89, 12 102 (1991) (“In sentence four cases, the filing period begins after the final judgment (“affirming, 13 modifying, or reversing”) is entered by the court and the appeal period has run, so that the 14 judgment is no longer appealable.”); *Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002) 15 (holding a sentence four remand becomes a final judgment for purposes of attorneys’ fees under 16 the EAJA upon expiration of the time for appeal). 17 For these reasons, the Court finds that Plaintiff is entitled to an award of fees pursuant to 18 the EAJA. See 28 U.S.C. § 2412(d)(1)(A). 19 B. The

Requested Fee is Reasonable 20 An award of attorneys' fees pursuant to the EAJA must be reasonable. 28 U.S.C. § 2412(d)(2)(A); *Perez-Arellano v. Smith*, 279 F.3d 791, 793 (9th Cir. 2002). The applicant bears 22 the burden of demonstrating the reasonableness of the request. *Blum v. Stenson*, 465 U.S. 886, 23 897 (1984). In determining whether a fee is reasonable, the court considers the reasonable hourly 24 rate, the hours expended, and the results obtained. See *Comm'r, INS v. Jean*, 496 U.S. 154, 163 25 1 The term "final judgment" for purposes of the EAJA "means a judgment that is final and not 26 appealable...." 28 U.S.C. § 2412(d)(2)(G). The court entered judgment for Plaintiff on March 6, 2025. (Doc. 22.) The judgment became a non-appealable "final judgment" 60 days later on May 5, 2025. See 27 Fed. R. App. P. 4(a)(1)(B) (providing that the notice of appeal may be filed by any party within 60 days after entry of the judgment if one of the parties is the United States, a United States agency, or a United 28 States officer or employee sued in an official capacity). 1 (1990); *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983); *Atkins v. Apfel*, 154 F.3d 986, 988 (9th 2 Cir. 1998).

3 The court may impose a reduction up to 10 percent—a haircut—"based purely on the 4 exercise of its discretion and without more specific explanation." *Costa v. Comm'r of Soc. Sec. 5 Admin.*, 690 F.3d 1132, 1136 (9th Cir. 2012) (citing *Moreno v. City of Sacramento*, 534 F.3d 6 1106, 1112 (9th Cir. 2008).) Otherwise, the court must make specific findings to justify a 7 reduction of fees. Id. 8 1. Hourly Rates 9 The EAJA provides that fee awards should be "based upon prevailing market rates for the 10 kind and quality of the services furnished," and that "attorney fees shall not be awarded in excess 11 of \$125 per hour unless the court determines that an increase in the cost of living or a special 12 factor . . . justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A). The Ninth Circuit maintains a list 13 of the statutory maximum hourly rates authorized by the EAJA, adjusted for increases in the cost 14 of living, on its website. See *Thangaraja v. Gonzales*, 428 F.3d 870, 876-77 (9th Cir. 2005); 15 Statutory Maximum Rates Under the Equal Access to Justice, available at 16 <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/> (last visited June 30, 2025). 17 Here, Plaintiff requests a rate of \$202.78 for work performed in 2020, a rate of \$217.54 18 for work performed in 2021, and a rate of \$231.49 for work performed in 2022. (Doc. 23 at 4 19 ["For the Equal Access to Justice Act, I am requesting an hourly rate of \$207.78 for attorney time 20 in 2020, an hourly rate of \$217.54 for attorney time in 2021, and \$231.49 for attorney time in 21 2022."].) These requested rates are not relevant to the instant action. Rather, a review of the 22 attached billing records indicates that Plaintiff's counsel seeks to recover for work performed in 23 2024 and 2025 at a rate of \$251.84. (See Doc. 23-1; Declaration of Plaintiff's Attorney ¶ 4 ["I 24 am requesting EAJA Fees in the amount of \$7190.03-which constitutes 28.55 hours total-which 25 times \$251.84 for work performed in 2024 and 2025."].) The Court notes that the published rate 26 for work performed in 2024 is \$251.84. Because no rate is currently posted for work performed 27 in 2025, the applicable rate is that posted for the previous period, i.e., 2024. See 28 U.S.C. § 28 2412(d)(2)(A); *Thangaraja*, 428 F.3d at 876-77;

Ninth Circuit Rule 39-1.6; Statutory Maximum 1 Rates Under the Equal Access to Justice, available at 2 <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/> (last visited June 20, 2025). 3 As the hourly rate requested of \$251.84 is within the statutory maximum, and the Commissioner 4 has not opposed the rate, the Court finds the rate reasonable. The Court will therefore apply the 5 requested rate of \$251.84 in calculating the attorneys' fees under EAJA. 6 2. Number of Hours 7 "A district court has wide latitude in determining the number of hours that were 8 reasonably expended by the prevailing lawyers" and may reduce the hours requested if the time 9 claimed is excessive, redundant, or otherwise unnecessary. *Sorenson v. Mink*, 239 F.3d 1140, 10 1146 (9th Cir. 2001); *Cunningham v. County of Los Angeles*, 879 F.2d 481, 484 (9th Cir. 1988), 11 cert. denied, 493 U.S. 1035, 110 S.Ct. 757, 107 L.Ed.2d 773 (1990). 12 Plaintiff seeks compensation for a total of 28.55 hours of attorney time spent on this 13 matter, which includes time conducting a preliminary review of the case (2.75 hours), preparing 14 and the opening brief and arguments (21.55 hours), reviewing the Commissioner's opposition 15 brief and conducting research (2.5 hours), and drafting the time itemization for the EAJA motion 16 (1.75 hours). (Doc. 23-1.) The Court finds that the request here appears to be reasonable and the 17 claimed 28.55 hours is well within the range of attorney time that would be expected to have been 18 expended on this matter. See, e.g., *Medina o/b/o/ I.I.M. v. Comm'r of Soc. Sec.*, No. 1:21-cv- 19 01441-AWI-SAB, 2022 WL 17986299, at *2 (E.D. Cal. Dec. 29, 2022) (finding 36.0 hours 20 expended to fully brief Social Security appeal and represent plaintiff in act reasonable); *Mao v. 21 Comm'r of Soc. Sec.*, No. 1:20-cv-00006-HBK, 2022 WL 2110684, at *1 (E.D. Cal. June 10, 22 2022) (awarding EAJA fees for 61.95 hours of attorney time following grant of motion for 23 summary judgment); *Guzman v. Comm'r of Soc. Sec.*, No. 2:20-CV-0468-KJN, 2021 WL 24 2534462, at *1 (E.D. Cal. June 21, 2021) (awarding EAJA fees for 38 hours spent in prosecution 25 of action and 2.75 hours on opposed EAJA application where the parties stipulated to voluntary 26 remand after plaintiff moved for summary judgment). Therefore, the Court will recommend an 27 award of EAJA fees in the full amount. 28 /// 1 3. Results Obtained 2 With respect to the results obtained, Plaintiff's counsel obtained a favorable judgment 3 remanding the case for further administrative proceedings. Having reviewed the itemization of 4 hours spent, the Court finds that the requested amount of fees is consistent with the result 5 obtained. 6 C. Plaintiff is the Proper Payee Under the EAJA 7 Plaintiff's counsel has submitted a copy of a fee assignment executed pursuant to a fee 8 agreement. (Doc. 23-2.) However, an attorney fee award under the EAJA is payable to the 9 litigant and is therefore subject to a government offset to satisfy any pre-existing debt owed to the 10 United States by the claimant. *Astrue v. Ratliff*, 560 U.S. 586, 592-93 (2010). 11 Subsequent to the decision in *Ratliff*, some courts have ordered payment of the award of 12 EAJA fees directly to plaintiff's counsel pursuant to plaintiff's assignment of EAJA fees, provided 13 that the plaintiff has no debt that requires offset. See *Blackwell v. Astrue*, No. CIV 08-1454 EFB, 14 2011 WL 1077765, at *5 (E.D. Cal. Mar. 21, 2011); *Dorrell v. Astrue*, No. CIV 09-0112 EFB, 15 2011 WL 976484, at *2-3 (E.D. Cal. Mar. 17, 2011); *Calderon v. Astrue*, No. 1:08-cv-01015 16 GSA, 2010

WL 4295583, at *8 (E.D. Cal. Oct. 22, 2010). Here, the Court concludes that the 17 EAJA fee award shall be made payable to Plaintiff; if, however, Plaintiff does not owe a 18 government debt, then the order should not be construed to preclude the payment directly to 19 Plaintiff's counsel pursuant to Plaintiff's assignment.

20 III. CONCLUSION AND RECOMMENDATION

21 Based on the foregoing, IT IS HEREBY RECOMMENDED that: 22 1. Plaintiff's motion for attorneys' fees under the EAJA (Doc. 23) be granted; 23 2. Plaintiff be awarded fees in the total amount of \$7,190.03 pursuant to the EAJA; 24 and 25 3. If the government determines that Plaintiff does not owe a federal debt that 26 qualifies for offset, then the fee award be made payable to Plaintiff's counsel 27 pursuant to Plaintiff's assignment of her interest in the fee award. 28 These Findings and Recommendations will be submitted to the United States District 1 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within 2 fourteen (14) days after being served with these Findings and Recommendations, the parties may 3 file written objections with the court. The document should be captioned "Objections to 4 Magistrate Judge's Findings and Recommendations." Objections, if any, shall not exceed 5 fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page 6 number if already in the record before the Court. Any pages filed in excess of the 15-page 7 limit may not be considered. The parties are advised that failure to file objections within the 8 specified time may result in the waiver of the "right to challenge the magistrate's factual 9 findings" on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). 11 IT IS SO ORDERED. 12 13 Dated: July 1, 2025 /s/ Barbara A. McAuliffe _

UNITED STATES MAGISTRATE JUDGE

14 15 16 17 18 19 20 21 22 23 24 25 26 27 28