

**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

OPINION

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 receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing 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 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 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 which fees and other expenses are sought.

(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 course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy. 28 U.S.C. § 2412(d)(1)(A). Here, the Court finds no dispute that Plaintiff is the prevailing party given that the Court remanded the matter for further administrative proceedings.

Gutierrez v. Barnhart, 274 F.3d 1255, 1257 (9th Cir. 2001) (“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.”); *Nichols v. Dudek*, No. 1:24-cv-00217-SKO, 2025 WL 1159062, at *1 (E.D.

Cal. Apr. 18, 2025) (“A party who obtains a remand in a Social Security case is a prevailing party for purposes of the EAJA.”). The Court further finds, in view of the Commissioner’s failure to oppose the motion, that the Commissioner has not met his burden of showing that the position of the government was substantially justified. See *Bell v. Comm’r of Soc.*

Sec., No. 2:23-cv-2895-DMC, 2025 WL 1433854, at *2 (E.D. Cal. May 19, 2025) (concluding that Commissioner had not met his burden of showing that the government’s position was substantially justified where Commissioner did not oppose motion for EAJA fees). Indeed, the Commissioner has not responded to the motion and has not argued that the position of the government was substantially justified or that special circumstances exist that make an award unjust.

Gutierrez, 274 F.3d at 1258 (“It is the government’s burden to show that its position was substantially justified or that special circumstances exist to make an award [of EAJA fees] unjust.”). Finally, the Court finds Plaintiff’s application for EAJA fees is timely because it was filed within thirty days of final judgment in this action.¹ See *Melkonyan v. Sullivan*, 501 U.S. 89, 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. § 21 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 021, 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 10 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