IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

EMILY STEMPER,

Plaintiff,

v. MEMORANDUM AND ORDER

JO ANNE B. BARNHARDT, 04-C-838-S
Commissioner of Social Security,

Defendant.

The above entitled matter was remanded to the Commissioner on April 14, 2005 for the Commissioner to determine whether the combination of plaintiff's impairments equals a listed impairment and to consider and evaluate the physicians' opinions.

On June 3, 2005 plaintiff moved the Court to enter judgment for plaintiff in the above captioned matter by "affirming the final decision of the Commissioner." This motion will be denied because the Court did not affirm the Commissioner but remanded the case to the Commissioner as described above.

On June 3, 2005 plaintiff also moved for attorney fees under the Equal Access to Justice Act. This motion has been fully briefed and is ready for decision.

Plaintiff is entitled to attorney fees when the Court finds that the defendant's position was not substantially justified. 28

U.S.C. § 2412(d)(1)(A). The substantial justification standard requires the government to show its position was grounded in: 1) a reasonable basis in truth for the facts alleged; 2) a reasonable basis in law for the theory propounded and 3) a reasonable connection between the facts alleged and the legal theory advanced. U.S. v. Hallmark, 200 F.3d 1076, 1080 (7th Cir. 2000). This standard is less stringent than the substantial evidence standard that governs review of the merits of disability determinations. See Cummings v. Sullivan, 950 F.2d 492, 498 (7th Cir. 1994).

The Court remanded this case to the Commissioner to determine whether the combination of plaintiff's impairments equals a listed impairment and to consider and evaluate the physicians' opinions. The Court stated that the ALJ did not consider the physicians' opinions pursuant to the regulations. Failure to follow the regulations is evidence that the Commissioner did not have a substantial basis for her position. Accordingly, the Commissioner's decision was not substantially justified and plaintiff is entitled to attorney fees.

Plaintiff requests a total of $3,477.41 in attorney fees and costs. Defendant does not object to the amount of this request. Accordingly, plaintiff's request for attorney fees in the amount of $3,477.41 will be granted.

On June 30, 2005 plaintiff moved for supplemental attorney fees. The Commissioner failed to respond. Plaintiff's motion for

supplemental fees in the amount of $715.93 will be granted as unopposed. The Court will award plaintiff attorney fees in the amount of $4,193.34.

ORDER

IT IS ORDERED that plaintiff's motion for entry of judgment affirming the final decision of the Commissioner is DENIED.

IT IS ORDERED that plaintiff's request for attorney fees and costs under the Equal Access to Justice Act is GRANTED in the total amount of $4,193.34.

Entered this 12th day of July, 2005.

BY THE COURT:

/s/

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JOHN C. SHABAZ
District Judge