

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MATTHEW T. STARY,

Plaintiff,

v.

MEMORANDUM AND ORDER

JO ANNE B. BARNHARDT,
Commissioner of Social Security,

06-C-082-S

Defendant.

The above entitled matter was remanded to the Commissioner on July 27, 2006 for consideration of the weight the opinions of the medical expert and plaintiff's treating physician should be given.

On October 18, 2006 plaintiff 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 consider the weight of the opinions of the medical expert and plaintiff's treating physician pursuant to her regulations. The Administrative Law Judge failed to give proper weight to the opinion of plaintiff's treating physician and the medical expert. Accordingly, the Commissioner's decision was not substantially justified and plaintiff is entitled to attorney fees.

Plaintiff requests a total of \$6,778.21 in attorney fees. Defendant does not object to the amount of the request. Accordingly,

ORDER

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 \$6,778.21 and that judgment shall be entered accordingly.

Entered this 20th day of November, 2006.

BY THE COURT:

s/

JOHN C. SHABAZ
District Judge