

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LAY XAYASENG	:	CIVIL ACTION
	:	
	:	
v.	:	NO: 04-5365
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security	:	

**MEMORANDUM AND ORDER**

AND NOW, this 5<sup>th</sup> day of April, 2006, upon consideration of the motion of plaintiff for attorney fees (Doc. No. 21) and the response of the defendant thereto (Doc. No. 22), the court makes the following findings and conclusions:

1. After her claims were denied below, Lay Xayaseng (“Xayaseng”) appealed to this Court. On October 24, 2005, United States Magistrate Judge M. Faith Angell recommended that Xayaseng’s motion for summary judgment be denied and that the Commissioner’s motion for summary judgment be granted. In reviewing Xayaseng’s claim, I independently reviewed the administrative record, the Report and Recommendation, and the parties’ submissions and concluded that the Administrative Law Judge’s (“ALJ”) determination that Xayaseng did not qualify for supplemental security income was legally flawed and not based on substantial evidence. Therefore, on February 15, 2006, I granted summary judgment in favor of Xayaseng and remanded the action.

2. On March 3, 2006, Xayseng’s counsel filed a motion for attorney fees under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d)(1)(A) arguing that she is a prevailing party and that Commissioner’s position is without substantial justification.

3. The burden of proving substantial justification rests with the Commissioner. Grossberg v. Barnhart, No. 04-2397, 2005 U.S. App. LEXIS 4950, at \* 5-6 (3d Cir. 2005) (citing Washington v. Heckler, 756 F.2d 959, 960 (3d Cir. 1986)). In order to meet this burden, “the government must show: (1) a reasonable basis in truth for the facts alleged; (2) a reasonable basis in law for the theory it propounds; and (3) a reasonable connection between the facts alleged and the legal theory advanced.” Id.

4. The Commissioner contends that Xayaseng’s counsel is not entitled to attorney fees under the EAJA because her position was substantially justified. § 2412(d)(1)(A). The Commissioner submits that her position was substantially justified because a reasonable person, Magistrate Judge Angell, thought that her decision was correct, and therefore, she had a reasonable basis in

law and fact.

5. Even if the Commissioner could assert a reasonable basis in fact for the remaining bases for remand, there is no basis in law for the Commissioner's position as the ALJ's decision is riddled with legal errors. (See paragraph 1 where the ALJ erred in failing to explain her reasons for rejecting two physicians; see also paragraph 7 where the ALJ erred in failing to incorporate all impairments supported by the record into her hypothetical). When the case turns on a question of law, the Commissioner must show that her argument presented a close or unsettled question of law, in order to establish that her position was substantially justified. Grossberg, 2005 U.S. App. LEXIS 4950, at \* 6 (citations omitted). Contrarily, if the Commissioner's position "clearly offends established precedent . . . its position cannot be said to be 'substantially justified'". Id. Here, the legal precedents were well-established, and in contrast to legal precedent, and therefore, the Commissioner does not have a reasonable basis in law for the theory she propounds.

6. Without a reasonable basis in law for the theory she propounds, the Commissioner has failed to meet her burden of proving substantial justification.

7. The attorney services performed by Robert Savoy, Esquire are compensable and reasonable under the EAJA and the Commissioner does not contest the amount of the fee request.

**THEREFORE, IT IS HEREBY ORDERED** that Xayaseng's motion for attorney fees under the EAJA § 2412 (d)(1)(A) is **GRANTED**; and that the defendant shall pay attorney fees in the amount of \$5,540.16, to Robert Savoy, Esquire.

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LOWELL A. REED, JR., S.J.