

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

WANDA WILLIAMS,)
)
 Plaintiff,)
v.)
)
CAROLYN W. COLVIN, ACTING)
COMMISSIONER OF SOCIAL)
SECURITY,)
)
 Defendant.)
_____)

Case No. 14-1081-CM

MEMORANDUM AND ORDER

Plaintiff Wanda Williams applied for disability insurance benefits and supplemental security income. The Commissioner of Social Security denied both requests, and an Administrative Law Judge (“ALJ”) upheld the denials. Before this court, plaintiff challenged the portion of the ALJ’s opinion that gave little weight to plaintiff’s treating psychologist, Kerin Schell, Ph.D. The court held that the ALJ improperly weighed Dr. Schell’s opinion, and reversed and remanded the case according to sentence four of 42 U.S.C. § 405(g). (Doc. 19.) Plaintiff now seeks attorney fees under the Equal Access to Justice Act (“EAJA”). (Doc. 21.)

In a suit challenging the denial of social security benefits, a plaintiff who achieves a sentence four remand becomes the “prevailing party.” *Goatcher v. Chater*, 57 F.3d 980, 981 (10th Cir. 1995) (citations omitted). The court must award the costs of litigation and attorney fees to the prevailing party of an action brought by or against the United States, unless the court finds that (1) the government’s position was “substantially justified” or (2) “special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). Here, the government does not argue that this case involved

“special circumstances [that] make an award unjust,” making the central issue whether the government was substantially justified in its position. 28 U.S.C. § 2412(d)(1)(A).

It is the government’s burden to show that its position was substantially justified. *See Gilbert v. Shalala*, 45 F.3d 1391, 1394 (10th Cir. 1995). In order to be substantially justified, the government does not need to be “justified to a high degree.” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). Rather, the government needs to be justified in the substance of its position. *Id.* The government’s position must be reasonably based on both law and fact. *Id.* “[I]f the governing law is unclear or in flux, it is more likely that the government’s position will be substantially justified.” *Martinez v. Sec’y of Health & Human Servs.*, 815 F.2d 1381, 1383 (10th Cir. 1987) (citation omitted). And “[t]he government’s success or failure on the merits at each level may be evidence of whether its position was substantially justified, but that success or failure alone is not determinative of the issue.” *Hadden v. Bowen*, 851 F.2d 1266, 1267 (10th Cir. 1988) (citation omitted).

The court is persuaded that the government’s position in this case was substantially justified. The government’s position ultimately did not prevail. But the government was reasonable in maintaining that plaintiff was not entitled to benefits and that the ALJ’s decision should be upheld. This court held that it could not determine whether the ALJ evaluated all of the factors identified in *Watkins v. Barnhart*, 350 F.3d 1297, 1301 (10th Cir. 2001). The ALJ did explicitly discuss one of the factors and noted that he had considered the requirements of 20 C.F.R. § 404.1527. Generally, the court will “take a lower tribunal at its word when it declares that it has considered a matter.” *Hackett v. Barnhart*, 395 F.3d 1168, 1173 (10th Cir. 2005) (citations omitted). The court acknowledged that the ALJ did not need to engage in a factor-by-factor analysis, but found that the discussion was inadequate. It was not unreasonable, however, for the government to take a contrary position.

Because the government's position was not unreasonable, the court determines that it was substantially justified. An award of EAJA attorney fees is not appropriate.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Attorney Fees (Doc. 21) is denied.

Dated this 27th day of August, 2015, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge