

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

C.D.M.,¹

Plaintiff,

v.

Case No. 19-1133-JTM

ANDREW SAUL,
Commissioner of Social Security,
Defendant.

MEMORANDUM AND ORDER

The court previously reversed and remanded the action for further consideration by the Commissioner. The matter is now before the court on the plaintiff's Motion for Attorney Fees (Dkt. 20). The government opposes the award, although it does not challenge the amount requested. Rather, the government contends no award should issue because the Commissioner had a reasonable basis for his conclusion. *See Pierce v. Underwood*, 487 U.S. 552, 565 (1988).

The court hereby grants the fee request. The court's decision recognized that the ALJ violated long-standing agency rules by failing to mention or discuss SSR 12-2p, an essential part of the proper assessment of plaintiff's fibromyalgia. This error warrants reversal and an award of fees. *See J.M.V. v. Berryhill*, 18-1202-JWB, 2019 WL 2393165, at

¹ Consistent with District policy, the court uses plaintiff's initials to preserve privacy interests.

*1 (D. Kan. June 6, 2019). Although some of the work by counsel was directed at other issues, the core of the work centered on plaintiff's pain and fibromyalgia. Defendant's position was not substantially justified and an award of fees is appropriate. *See Quintero v. Colvin*, 642 Fed. Appx. 793, 796 (10th Cir. 2016).

The court therefore awards reasonable attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, payable to attorney Frederick J. Daley, Jr., as principal attorney of Daley Disability Law, P.C., in the total amount of \$7,606.88, which represents 34.92 hours at \$193.75 per hour; and 8.45 law clerk hours at \$100 per hour. Additionally, the court awards costs in the amount of \$400.00.

IT IS SO ORDERED this day of April, 2021.

J. Thomas Marten
J. THOMAS MARTEN, JUDGE