

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

JOHNNY E. THOMAS,)	
Plaintiff)	
)	
v.)	Civil Action No. 1:02cv00198
)	
)	
)	<u>OPINION</u>
JO ANNE B. BARNHART,)	
Commissioner of Social Security,)	By: PAMELA MEADE SARGENT
Defendant)	United States Magistrate Judge

In this social security action, I am asked to rule on a motion for an attorney’s fee, (Docket Item No. 17) ("the Motion"). Based on the reasoning set out below, the Motion will be denied.

Johnny E. Thomas filed this action challenging the final decision of the Commissioner of Social Security, (“Commissioner”), denying his claim for a period of disability and disability insurance benefits, (“DIB”), under the Social Security Act, as amended, (“Act”), 42 U.S.C.A. § 423 (West 2003). Jurisdiction of this court exists pursuant to 42 U.S.C. § 405(g). The Commissioner answered the suit, filing the administrative record. Thereafter, the court remanded the case to the Commissioner. Thomas’s attorney represents to the court that, subsequent to remand, he requested and was awarded \$7,000.00 in fees and costs pursuant to the Equal Access to Justice Act, (“EAJA”), 28 U.S.C. § 2412(d)(1)(A) (West 1994 & Supp. 2004). Thomas’s attorney further represents that, subsequent to remand, the Commissioner found that Thomas was disabled and awarded benefits. Thomas’s attorney now has filed a petition seeking approval of a fee of \$3,516.25 for representing Thomas in this court.

The Commissioner has responded that she does not object to the fee request. (Docket Item No. 19.) Although Thomas's attorney represents to the court that Thomas received a favorable disability decision by award letter dated January 30, 2005, he did not file this award letter with the court. Furthermore, Thomas's attorney has not provided the court with the required sworn itemized statement of his time expended pursuing his claim in this court. Moreover, it is obvious to the court that counsel has inappropriately included time in the unsworn itemization that does not relate to the claim on which counsel is seeking a fee for work performed in this court. Therefore, I find that an award of an attorney's fee on this record is inappropriate.

DATED: April 5, 2005.

/s/ Pamela Meade Sargent
UNITED STATES MAGISTRATE JUDGE