

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4947

PATRICK BREAUX,

Plaintiff-Appellant,

versus

UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(91-CV-184)

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

(January 5, 1994)

Before POLITZ, Chief Judge, HIGGINBOTHAM, and DeMOSS, Circuit
Judges.

PER CURIAM:

After the district court remanded this case to the ALJ for further findings, it denied Breaux's application for attorneys fees under the Equal Access to Justice Act. This court affirmed in an unpublished opinion, finding the case controlled by Bertrand v. Sullivan, 976 F.2d 977, 979-80 (5th Cir. 1992). Breaux v. Secretary, No. 92-4947, 1993 U.S. App. LEXIS 12009 (5th Cir. May 6, 1993) (per curiam). The Supreme Court vacated and remanded for further proceedings in light of its later decision in Shalala v. Schaefer, 113 S.Ct. 2625 (1993). Breaux v. Shalala, 114 S.Ct. 297

(1993).

Shalala v. Schaefer holds that a party who obtains a remand pursuant to the fourth sentence of 42 U.S.C. § 405(g) qualifies as a prevailing party for purposes of attorneys fees under the EAJA. 113 S.Ct. at 2631-32. Schaefer overruled Part IV of Bertrand v. Sullivan, 976 F.2d at 979-80, which stated that a fee application by a plaintiff who has obtained a remand order should be denied "as premature and without prejudice."

The district court's denial of Breaux's application is REVERSED and REMANDED to allow the district court to award reasonable attorney fees.