

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

JUDITH F. TUCKER,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner, Social Security
Administration,

Defendant.

Case No. 04-CV-474-FHM

OPINION AND ORDER

Plaintiff's Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) [Dkt. 43] is GRANTED.

In *McGraw v. Barnhart*, 450 F.3d 493, 496 (10th Cir. 2006), the Court ruled that attorney fees are awardable under 42 U.S.C. § 406(b)(1) when the Social Security Administration awards disability benefits to a claimant following a remand from the federal court. In such a circumstance the authority of Fed. R. Civ. P. 60(b)(6) is employed to allow counsel to seek fees under §406(b)(1) long after the usual fourteen days allotted by Fed. R. Civ. P. 54((d)(2)(B)(i) for filing a motion for attorney fees has expired. *McGraw*, 450 F.3d at 505.

On December 15, 2006, the Court reversed and remanded this case to the Commissioner for further consideration. [Dkt. 36]. On February 13, 2008, the Commissioner rendered a fully favorable decision. [Dkt. 16]. Counsel for Plaintiff argues that the instant motion, filed March 25, 2009, was filed within a reasonable time as required by *McGraw v. Barnhart*, 450 F.3d 493 (10th Cir. 2006) because, although the Commissioner's favorable decision is dated February 13, 2008, the Notice of Award dated

April 12, 2008, did not state the amount of past due benefits or the amount being withheld for attorney fees. A Notice of Change in Benefits dated October 7, 2008, was issued stating that \$18,906.50 was being withheld for payment of attorney fees. That Notice was mailed to Plaintiff's former counsel but was not mailed to current counsel until December 30, 2008. Counsel represents that the Commissioner was advised of his address. The Court finds that in this particular case the instant motion was filed within a reasonable time.

Plaintiff's Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) [Dkt. 43] is GRANTED. The Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b) [Dkt. 45] will be considered on the merits.

SO ORDERED this 8th day of May, 2009.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE