

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

WO

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

Brenda K. Green,

Plaintiff,

v.

Michael J. Astrue,

Defendant.

No. CV-07-01382-PHX-DGC

**ORDER**

Eric Slepian, counsel for Plaintiff Brenda Green, has filed a motion for an award of attorney fees pursuant to 42 U.S.C. § 406(b). Doc. 44. No response has been filed. The Court will grant the motion and award fees in the amount of \$7,212.00.

Plaintiff applied for disability insurance benefits and supplemental security income on October 20, 2003. Doc. 37 at 1. Plaintiff commenced this action for judicial review in July 2007 and the Court ultimately remanded the case for further proceedings. *Id.* at 11. The Court then awarded Plaintiff's counsel \$5,550.00 in attorney fees pursuant to the Equal Access for Justice Act ("EAJA"), 28 U.S.C. § 2412. Doc. 42. On remand, Plaintiff was awarded benefits and Defendant withheld 25 percent of the benefits awarded – \$7,212.00 – for the payment of attorney fees. Doc. 44-1 at 4.

The fee agreement between Mr. Slepian and Plaintiff provides that Mr. Slepian shall receive 25 percent of the past-due benefits awarded to Plaintiff as a result of Mr. Slepian's representation. Doc. 44-1 at 2. The agreement indicated that Mr. Slepian would receive the greater of \$5,300.00 or "the maximum statutory allowance, of all past

1 due benefits . . . under Title II and Title XVI[.]” *Id.* Mr. Slepian now seeks an order  
2 authorizing payment of the \$7,212.00 withheld by Defendant and argues that his request  
3 is reasonable. Doc. 44 at 2.

4 Section 406 establishes “the exclusive regime for obtaining fees for successful  
5 representation of Social Security benefits claimants.” *Gisbrecht v. Barnhart*, 535 U.S.  
6 789, 795-96 (2002). “The statute deals with the administrative and judicial review stages  
7 discretely: § 406(a) governs fees for representation in administrative proceedings;  
8 § 406(b) controls fees for representation in court.” *Id.* at 794. Section 406(b) provides  
9 that “[w]henver a court renders a judgment favorable to a claimant . . . who was  
10 represented before the court by an attorney, the court may determine and allow as part of  
11 its judgment a reasonable fee for such representation, not in excess of 25 percent of the  
12 total of the past-due benefits to which the claimant is entitled by reason of such  
13 judgment[.]” 42 U.S.C. § 406(b)(1)(A).

14 In *Gisbrecht*, the Supreme Court discussed the meaning of the term “reasonable  
15 fee” in § 406(b). The Court concluded that “§ 406(b) does not displace contingent-fee  
16 agreements as the primary means by which fees are set for successfully representing  
17 Social Security benefits claimants in court. Rather, § 406(b) calls for court review of  
18 such arrangements as an independent check, to assure that they yield reasonable results in  
19 particular cases.” 535 U.S. at 807. The Court noted that “Congress has provided one  
20 boundary line: Agreements are unenforceable to the extent that they provide for fees  
21 exceeding 25 percent of the past-due benefits.” *Id.*

22 Mr. Slepian filed an itemization of services along with his EAJA fee motion  
23 (Doc. 39-1 at 5), showing that he spent 35.40 hours on this case. If Mr. Slepian were to  
24 receive the full 25 percent of past-due benefits as provided in the fee agreement, he  
25 would receive a fee equivalent to approximately \$203.00 per hour. Having considered  
26 the reasonableness factors set forth in *Ginsbrecht*, the Court concludes that \$203.00 per  
27 hour is a reasonable rate. Mr. Slepian achieved a favorable result for Plaintiff and should  
28

1 be compensated to recognize the risks involved in contingent fee litigation. The Court  
2 will award Mr. Slepian \$7,212.00 for his representation of Plaintiff. The Court notes that  
3 Mr. Slepian has already been awarded \$5,500.00 under the EAJA. The Court will award  
4 Mr. Slepian the full § 406(b) amount and direct him to refund to Plaintiff the smaller  
5 EAJA award. *See Gisbrecht*, 535 U.S. at 796.

6 **IT IS ORDERED:**

7 1. The motion for an award of attorney fees filed by Plaintiff's counsel, Eric  
8 Slepian (Doc. 44) is **granted** pursuant to 42 U.S.C. § 406(b). Mr. Slepian is  
9 awarded **\$7,212.00** in attorney fees, to be paid out of the sums withheld by  
10 Defendant from Plaintiff's past due benefits.

11 2. Defendant shall pay Mr. Slepian **\$7,212.00** within 30 days from the date of  
12 this order.

13 3. Mr. Slepian shall reimburse Plaintiff **\$5,550.00**, the amount previously paid  
14 by the government under the EAJA, within 30 days from the date of this order.

15 4. Mr. Slepian shall provide Plaintiff with a copy of this order.

16 Dated this 12th day of September, 2014.

17  
18  
19 

20  
21 

---

David G. Campbell  
United States District Judge