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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 James Stolze,

10 Plaintiff,

11 v.

12 Commissioner of Social Security  
13 Administration,

14 Defendant.

No. CV-16-01898-PHX-JAT

**ORDER**

15 Pending before the Court is Plaintiff James Stolze's ("Plaintiff")<sup>1</sup> Motion for  
16 Attorneys' Fees. (Doc. 26). The Commissioner has responded. (Doc. 28). The Court now  
17 rules on the motion.

18 When Plaintiff first filed for disability insurance benefits, the Social Security  
19 Administration's ("SSA") Administrative Law Judge ("ALJ") rendered only a partially  
20 favorable decision on Plaintiff's claim. (Doc. 26 at 4). On appeal to this Court, Plaintiff  
21 and the Commissioner stipulated to a remand under sentence four of 42 U.S.C. § 405(g).  
22 (Id.). After the case returned to the SSA, the ALJ issued a fully favorable decision. (Id.).

23 The SSA has set aside 25 percent of the past-due benefits awarded, \$11,462.25, for  
24 a potential attorneys' fee award. (Id.). The parties previously stipulated to a \$2,933.01  
25 award of attorneys' fees under the Equal Access to Justice Act ("EAJA"). (Doc. 24). The  
26 SSA has also approved a \$7,390 fee for counsels' work at the administrative level. (Doc.  
27 26 at 13 n.2). Plaintiff's counsel now seeks \$4,072.25 under 42 U.S.C. § 406(b). (Id. at 2).

28 <sup>1</sup> Plaintiff is the widower of Cheryl R. Stolze. Because James substituted in as a plaintiff  
for Cheryl, the Court will use "Plaintiff" to refer to each of them.

1 A court entering judgment in favor of a social security claimant represented by  
2 counsel “may determine and allow as part of its judgment a reasonable fee for such  
3 representation, not in excess of 25 percent of the total of the past-due benefits to which the  
4 claimant is entitled by reason of such judgment.” 42 U.S.C. § 406(b)(1)(A) (emphasis  
5 added). Although “[t]he statute does not specify how courts should determine whether a  
6 requested fee is reasonable,” *Crawford v. Astrue*, 586 F.3d 1142, 1148 (9th Cir. 2009), the  
7 Supreme Court has made clear that the first step is to respect “the primacy of lawful  
8 attorney-client fee agreements,” *Gisbrecht v. Barnhart*, 535 U.S. 789, 793 (2002). A court  
9 may take a downward departure from a requested fee award “if the attorney provided  
10 substandard representation or delayed the case, or if the requested fee would result in a  
11 windfall.” *Crawford*, 586 F.3d at 1151. A court can also “consider the lodestar calculation,  
12 but only as an aid in assessing the reasonableness of the fee.” *Id.* (citing *Gisbrecht*, 535  
13 U.S. at 808). “Because the SSA has no direct interest” in how the award is apportioned  
14 between client and counsel, district courts must independently “assure that the  
15 reasonableness of the fee is established.” *Id.* at 1149.

16 The \$4,072.25 fee is reasonable under *Gisbrecht*. First, the fee agreement in this  
17 case provides that Plaintiff’s counsels’ fee shall equal 25 percent of the total amount of  
18 past-due benefits awarded—“the ‘most common fee arrangement between attorneys and  
19 Social Security claimants.’” *Crawford*, 586 F.3d at 1147–48 (quoting *Gisbrecht*, 535 U.S.  
20 at 800). Second, nothing in the record indicates that Plaintiff’s counsel exhibited  
21 substandard representation. Third, the requested fees will not result in a windfall. Dividing  
22 the requested fees by the 15.3 hours that counsel worked on the case before this Court nets  
23 an hourly rate of \$266.16, which is well within the range of reasonability in Social Security  
24 cases. *Kellogg v. Astrue*, No. CV 09-00982-PHX-JAT, 2013 WL 5236638, at \*2 (D. Ariz.  
25 Sept. 17, 2013) (collecting cases). Furthermore, when offset by the EAJA award, Plaintiff  
26 will ultimately pay only \$1,139.24 in § 406(b) fees. Finally, although the Commissioner  
27 expressed some concern regarding the 40-month delay between the notice of award and the  
28 instant motion, that concern “abated” once Plaintiff’s counsel informed the Commissioner

1 that the time it took to finalize attorneys' fees for representing Plaintiff before the SSA, see  
2 42 U.S.C. § 406(a), accounts for this delay. (Doc. 28 at 3). The Court does not find this  
3 delay warrants reducing the requested fee any further.

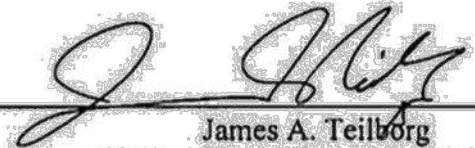
4 Therefore,

5 IT IS ORDERED that Plaintiff's Motion for Attorneys' Fees (Doc. 26) is  
6 GRANTED.

7 IT IS FURTHER ORDERED that Plaintiff's counsel must refund the EAJA fee  
8 award to Plaintiff as the smaller of the two fee awards. *Gisbrecht*, 535 U.S. at 796.

9 Dated this 3rd day of June, 2020.

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James A. Teilborg  
Senior United States District Judge