

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - ORDER

Case No. CV 04-4228 AN

Dated: September 16, 2008

Title: Sandra Hester v. Michael Astrue

Present: **Hon. Arthur Nakazato, United States Magistrate Judge**
(In Chambers - No Appearances)

Melissa Cash
Deputy Clerk

None
Court Reporter

Proceedings: Plaintiff’s counsel’s motion for attorney fees pursuant to 42 U.S.C. § 406(b) (“Motion”) (docket no. 35)

Rulings: The Motion is denied without prejudice (details discussed below).

Discussion:

On May 2, 2008, Plaintiff’s counsel e-filed the pending Motion seeking an award of \$8,110.40 in attorney’s fees pursuant to 42 U.S.C. § 406(b), less \$3,700.00 of EAJA fees already paid. However, in his attached supporting declaration, Plaintiff’s counsel represents that, on March 28, 2008, he filed a request for reconsideration of the calculation of benefits and, based upon his experience, “it will take the Social Security Administration about 24 to 36 months to resolve the request for reconsideration on the amount of benefits.” (Motion, counsel’s declaration, ¶ 2.3 at 26.) Plaintiff’s counsel opines that he believes the correct amount of benefits will eventually be paid. (Id., ¶2.5.) By filing the motion for reconsideration, the Court presumes Plaintiff believes she is entitled to a larger amount of past benefits due. However, Plaintiff’s counsel does not state what he believes to be the correct amount of past benefits due; nor does he identify the amount of extra attorney’s fees, if any, he seeks in the event the motion for reconsideration is granted. Regardless, by notifying the Court about the request for reconsideration, the Court finds Plaintiff’s counsel has indicated that he will or may file another motion seeking additional 406(b) fees if the motion for reconsideration is granted. The fact that Plaintiff’s counsel has not expressly stated that he waives or forfeits his right to seek additional 406(b) fees if the motion for reconsideration is granted reinforces the Court’s conclusion.

Under the circumstances, the Court finds the pending Motion is premature. Further, the Court is not inclined to make piecemeal awards of 406(b) fees. Accordingly, the Motion

is denied without prejudice to re-filing another 406(b) motion within 30 days from the date the Social Security Administration grants the motion for reconsideration and issues a notice of award of benefits with the recalculated amount of benefits or, alternatively, the date the motion for reconsideration is denied.

cc: All Parties

Initials of Deputy Clerk TD