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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WAKESHA L. RIVERS,

Plaintiff,

v.

NANCY A. BERRYHILL,¹ Acting
Commissioner of Social Security,

Defendant.

Case No. CV 13-5972-KK

ORDER GRANTING MOTION FOR
ATTORNEY FEES PURSUANT TO
42 U.S.C. § 406(B)

I.

INTRODUCTION

Plaintiff Wakesha L. Rivers's ("Plaintiff's") counsel, Steven G. Rosales of Law Offices of Lawrence D. Rohlring ("Counsel"), filed a Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b) ("Motion"). The Motion seeks an award in the amount of \$16,089.00 for representing Plaintiff in an action to obtain disability insurance benefits.

The parties have consented to the jurisdiction of the undersigned United States Magistrate Judge, pursuant to 28 U.S.C. § 636(c). For the reasons stated below, the Court grants the Motion.

¹ Nancy A. Berryhill is now the Acting Commissioner of the Social Security Administration. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, the Court substitutes Nancy A. Berryhill as Defendant in the instant case.

1 **II.**

2 **RELEVANT BACKGROUND**

3 On August 21, 2013, Plaintiff filed the complaint in this action. See ECF
4 Docket No. (“Dkt.”) 3, Compl. at 1. Plaintiff alleged the Commissioner of the
5 Social Security Administration (“Defendant”) had improperly denied Plaintiff’s
6 application for disability insurance benefits. *Id.* at 2-3. On August 4, 2014, the
7 Court found Defendant erred in denying Plaintiff’s application, and entered
8 Judgment in Plaintiff’s favor remanding the case to Defendant for further
9 administrative proceedings. Dkt. 25, Judgment. On remand, Defendant stated she
10 would withhold \$16,089.00 as twenty-five percent of Plaintiff’s past due benefits
11 “to pay [Plaintiff’s] representative.” Dkt. 34-3, Notice of Award at 2.

12 On December 10, 2014, the Court denied Counsel’s request for EAJA fees
13 finding Defendant’s decision was substantially justified. Dkt. 33, Order Denying
14 EAJA Fees.

15 On November 16, 2017, pursuant to 42 U.S.C. § 406(b), Counsel filed the
16 instant Motion seeking the amount of \$16,089.00 for representing Plaintiff in the
17 underlying proceedings before the Court.² Dkt. 34, Mot. Counsel also states 19.5
18 hours of attorney and paralegal time were expended on Plaintiff’s case, Dkt. 34-4,
19 Itemized Hours, and seeks compensation pursuant to a contingency fee agreement
20 stating Counsel would receive “25% of the backpay awarded upon reversal of an
21 unfavorable ALJ decision,” Dkt. 34-1, Contingency Fee Agreement.

22 On November 15, 2017, Plaintiff was served with the Motion and informed
23 she had a right to file a response to the Motion. Dkt. 34, Mot. at 2, 11. However,
24 Plaintiff failed to file a timely response. On November 27, 2017, Defendant filed a
25 Non-Opposition to the Motion stating she “takes no position on the reasonableness
26

27 ² On November 21, 2017, the matter was reassigned to the undersigned United
28 States Magistrate Judge due to the unavailability of the previously assigned United
States Magistrate Judge.

1 of the [Motion’s] request.” Dkt. 37, Non-Opposition at 4. Thus, the Court deems
2 this matter submitted.

3 III.

4 DISCUSSION

5 A. APPLICABLE LAW

6 Pursuant to 42 U.S.C. § 406(b) (“Section 406(b)”):

7 Whenever a court renders a judgment favorable to a claimant under
8 this subchapter who was represented before the court by an attorney,
9 the court may determine and allow as part of its judgment a reasonable
10 fee for such representation, not in excess of 25 percent of the total of
11 the past-due benefits to which the claimant is entitled by reason of
12 such judgment, and the Commissioner of Social Security may . . .
13 certify the amount of such fee for payment to such attorney out of, and
14 not in addition to, the amount of such past-due benefits.

15 42 U.S.C. § 406(b)(1)(A). Thus, “a prevailing [disability] claimant’s [attorney’s]
16 fees are payable only out of the benefits recovered; in amount, such fees may not
17 exceed 25 percent of past-due benefits.” Gisbrecht v. Barnhart, 535 U.S. 789, 792,
18 122 S. Ct. 1817, 152 L. Ed. 2d 996 (2002).

19 Where a claimant entered into a contingent fee agreement with counsel, a
20 court must apply Section 406(b) “to control, not to displace, fee agreements
21 between Social Security benefits claimants and their counsel.” Id. at 793. A court
22 should not use a “lodestar method,” under which a district court “determines a
23 reasonable fee by multiplying the reasonable hourly rate by the number of hours
24 reasonably expended on the case.” Crawford v. Astrue, 586 F.3d 1142, 1148 (9th
25 Cir. 2009) (en banc). Rather, where the claimant and counsel entered into a lawful
26 contingent fee agreement, courts that use the “lodestar” method as the starting
27 point to determine the reasonableness of fees requested under Section 406(b)
28 improperly “reject the primacy of lawful attorney-client fee agreements.”

1 Gisbrecht, 535 U.S. at 793. Thus, courts should not apply lodestar rules in cases
2 where the claimant and counsel reached a contingent fee agreement because:

3 [t]he lodestar method under-compensates attorneys for the risk they
4 assume in representing [social security] claimants and ordinarily
5 produces remarkably smaller fees than would be produced by starting
6 with the contingent-fee agreement. A district court’s use of the
7 lodestar to determine a reasonable fee thus ultimately works to the
8 disadvantage of [social security] claimants who need counsel to
9 recover any past-due benefits at all.

10 Crawford, 586 F.3d at 1149.

11 However, even in contingency fee cases, a court has “an affirmative duty to
12 assure that the reasonableness of the fee [asserted by counsel] is established.” Id.
13 The court must examine “whether the amount need be reduced, not whether the
14 lodestar amount should be enhanced.” Id. The court may consider factors such as
15 the character of the representation, the results achieved, the ratio between the
16 amount of any benefits awarded and the time expended, and any undue delay
17 attributable to counsel that caused an accumulation of back benefits in determining
18 whether a lawful contingent fee agreement is reasonable. See Gisbrecht, 535 U.S.
19 at 808; Crawford, 586 F.3d at 1151.

20 **B. ANALYSIS**

21 Here, Counsel seeks a reasonable fee under Section 406(b). Plaintiff
22 retained Counsel to represent her in federal court in her appeal from the
23 administrative denial of benefits, and agreed to pay Counsel a contingent fee of
24 twenty-five percent of any past due benefits obtained. See Dkt. 34-1, Contingency
25 Fee Agreement. Consideration of the factors set forth in Gisbrecht and Crawford
26 warrants no reduction of the fee Counsel seeks.

27 The record discloses no issue regarding the quality or efficiency of Counsel’s
28 representation before this Court, or any misconduct or delay by Counsel. Counsel

1 obtained a favorable outcome for Plaintiff, ultimately resulting in a remand for
2 further administrative proceedings and an award of past due benefits. See Dkt. 25,
3 Judgment; Dkt. 34-3, Notice of Award. Further, the 19.5 hours expended to litigate
4 this case was reasonable and within the approved range for social security disability
5 cases. See Patterson v. Apfel, 99 F. Supp. 2d 1212, 1214 & n.2 (C.D. Cal. 2000)
6 (noting that “a survey of several dozen cases in which attorney’s fees were
7 awarded in social security cases suggests that the 33.75 hours spent by plaintiff’s
8 counsel falls within the approved range”).

9 In addition, a fee of \$16,089.00 based on 19.5 hours of attorney and paralegal
10 time is reasonable. See Dkt. 25-4, Itemized Hours. The Court finds Counsel’s
11 effective hourly rate of approximately \$825.08, id., reasonable under the
12 circumstances.³ See Villa v. Astrue, 2010 WL 118454, at *1-2 (E.D. Cal. Jan. 7,
13 2010) (approving Section 406(b) fees exceeding \$1,000.00 per hour, and noting
14 “[r]educing [Section] 406(b) fees after Crawford is a dicey business”). Further,
15 post-Gisbrecht decisions have approved contingent fee agreements yielding hourly
16 rates greater than the rate Counsel seeks. E.g., Daniel v. Astrue, 2009 WL
17 1941632, at *2-3 (C.D. Cal. July 2, 2009) (approving fees amounting to \$1,491.25
18 per hour). Hence, in light of the hours Counsel expended, the Section 406(b) fee
19 award amount Counsel requests would not represent an unfair windfall to Counsel.

20 Finally, nothing in the record suggests any overreaching in the making of the
21 fee agreement or any impropriety on the part of Counsel in representing Plaintiff.
22 Counsel assumed the risk of nonpayment inherent in a contingency agreement and
23 Counsel’s efforts proved successful for Plaintiff. Accordingly, the Court finds the
24 Section 406(b) fees Counsel requests reasonable.

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28 ³ Even if the Court only considers the 16.3 hours of attorney time, the Court finds the effective hourly rate of \$987.06 reasonable under the circumstances.

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IV.
ORDER

Based on the foregoing, **IT IS HEREBY ORDERED:** (1) Counsel's Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b) is **GRANTED**; and (2) Defendant is directed to pay Counsel the sum of \$16,089.00.

Dated: December 05, 2017



HONORABLE KENLY KIYA KATO
United States Magistrate Judge