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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL D. TICE

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social
Security,

Defendant.

Case No. SACV 04-0969 JTL

ORDER AWARDING ATTORNEY FEES
PURSUANT TO 42 U.S.C. SECTION 406(b)

BACKGROUND

On August 17, 2004, Michael D. Tice ("plaintiff") filed a Complaint seeking review of the Commissioner's denial of his application for Social Security disability and Supplemental Security Income benefits. On September 13, 2004, plaintiff and Michael J. Astrue, Commissioner of Social Security ("defendant"), filed a joint Consent to Proceed Before United States Magistrate Judge Jennifer T. Lum. On April 15, 2005 defendant filed an Answer to the Complaint. Thereafter, on June 22, 2005, the parties filed their Joint Stipulation.

On October 6, 2005, this Court remanded the case and instructed the Administrative Law Judge to recontact and seek clarification from plaintiff's treating sources to remedy the errors outlined in the Court's Memorandum Opinion and Order. On November 30, 2005, the Court

1 entered an Order granting plaintiff's counsel the sum of \$3,028.25 in attorney fees pursuant to
2 the Equal Access to Justice Act ("EAJA").

3 After conducting a supplemental hearing, the ALJ determined that plaintiff was entitled
4 to benefits. (See Declaration of Bill LaTour ["LaTour Decl."] ¶ 3, Exh. 3). Thereafter, the
5 Commissioner sent plaintiff a Notice of Award indicating an award of retroactive benefits under
6 Title II to plaintiff in the sum of \$51,717.50 and to plaintiff's children in the sum of \$27,582.50.
7 (See LaTour Decl. ¶ 4, Exh. 4, 4a, 4b).

8 On August 5, 2008, plaintiff filed a Motion for Attorney's Fees pursuant to 42 U.S.C.
9 Section 406(b) ("Motion"). On August 22, 2008, defendant filed a Response to Plaintiff's
10 Counsel's Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b) ("Response"). On August
11 27, 2008, plaintiff filed a Reply to Defendant's Response to Plaintiff's Counsel's Motion for
12 Attorney Fees Pursuant to 42 U.S.C. § 406(b) ("Reply").

13 14 DISCUSSION

15 Congress authorized payment of a reasonable fee for representation of a successful
16 social security claimant. 42 U.S.C. § 406(b). A "reasonable fee" cannot be in excess of 25
17 percent of the past-due benefits to which the claimant is entitled by his or her judgment. 42
18 U.S.C. § 406(b)(1)(A). This fee provision is not intended to displace contingent fee agreements
19 as a means to set fees for representation of social security benefit claimants. Gisbrecht v.
20 Barnhart, 535 U.S. 789, 807 (2002). Nor does it imply that all contingent fee agreements that
21 provide for fees up to 25 percent of the past-due benefits awarded are reasonable per se. Id.
22 Instead, in order to recover fees under Section 406(b), an attorney for a successful claimant
23 must show that the fee sought is within the 25 percent boundary and that the fee sought is
24 reasonable for the services rendered in the course of his or her representation before the
25 district court. Id.

26 Accordingly, even when a contingent fee falls within the 25 percent boundary, the court
27 may reduce the fee if the court finds it unreasonable. Id. In order to determine whether a fee
28 is reasonable, courts have considered the attorney's recovery based on the character of the

1 representation and the results the representation achieved. Gisbrecht, 535 U.S. at 808. For
2 example, if the attorney is responsible for delay, "a reduction is in order so that the attorney will
3 not profit from the accumulation of benefits during the pendency of the case in court." Id.
4 Similarly, if the benefits are large in comparison to the amount of time counsel spent on the
5 case, a downward adjustment is in order to avoid a windfall for the attorney. Id.; see also Ellick
6 v. Barnhart, 445 F. Supp. 2d 1166, 1173 (C.D. Cal. 2006) ("Counsel spent very little time on the
7 case in comparison to the amount of benefits now owing, and the issues briefed in the summary
8 judgment motion were neither novel nor complex."). If the contingent fee is found to be
9 unreasonable, the court must adjust the attorney's recovery accordingly. Gisbrecht, 535 U.S.
10 at 808.

11 Here, plaintiff is a successful social security claimant and plaintiff's attorney may be
12 awarded a reasonable fee under Section 406(b). See 42 U.S.C. § 406(b)(1)(A) ("Whenever a
13 court renders a judgment favorable to a claimant under [Title II] who was represented before
14 the court by an attorney, the court may determine and allow as part of its judgment a
15 reasonable fee for such representation, not in excess of 25 percent of the total of the past-due
16 benefits to which the claimant is entitled by reason of such judgment . . .").

17 On August 6, 2004, plaintiff entered into a contingent fee agreement with his attorney.
18 (See LaTour Decl. ¶ 2, Exh. 8). Under the terms of the contingent fee agreement, plaintiff
19 agreed that his counsel would receive a fee equal to 25 percent of the total retroactive benefits
20 awarded to him and his family up to the date of the decision awarding benefits. (See LaTour
21 Decl. ¶ 2, Exh. 8 ¶ 4). Thus, the contingent fee agreement provides for a fee that falls within
22 the acceptable range provided by Section 406(b). In addition, there is no basis to find, and
23 none is alleged, that the contingent fee agreement itself is invalid based on fraud or other
24 grounds.

25 Upon finding a valid contingent fee agreement between a successful social security
26 claimant and his or her attorney, the Court must determine whether the contingent fee is
27 reasonable for the services rendered. Gisbrecht, 535 U.S. at 807. Here, plaintiff's counsel
28 proposes to collect a fee of \$11,202.25 based on 10.75 hours of attorney time, and 11.75 hours

