

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

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALFRED D. JOHNSON,)	Case No. SACV 15-1959-JEM
)	
Plaintiff,)	MEMORANDUM OPINION AND ORDER
)	RE: ATTORNEYS' FEES
v.)	
)	
NANCY A. BERRYHILL,)	
Acting Commissioner of Social Security,)	
)	
Defendant.)	

I. INTRODUCTION

On August 29, 2016, this Court reversed the decision of the Commissioner of Social Security denying benefits to Alfred D. Johnson (“Johnson” or “Plaintiff”) and remanded the case to the Commissioner for payment of benefits. Subsequently, the Commissioner determined that Johnson was entitled to past due benefits in the amount of \$31,900.00.

Now before the Court is the motion of Plaintiff’s counsel Brian C. Shapiro (“Shapiro”) of the Law Offices of Lawrence D. Rohlfing for attorney’s fees permitted under the Social Security Act, 42 U.S.C. § 406(b). Pursuant to the parties’ stipulation and the order of this Court, Plaintiff’s counsel previously received \$3,875.00 in fees and costs under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d), paid by the government. Section 406(b), however, permits an award of fees from the benefits received by Plaintiff. In

1 accordance with a contingent fee agreement signed by Johnson, counsel seeks an order
2 awarding him \$7,900.75. Typically, the Court would order counsel to reimburse Plaintiff the
3 EAJA fees awarded in this case. The Court awarded EAJA fees in the amount of \$3,875.00
4 on November 17, 2016. However, the Treasury Department confiscated the EAJA award to
5 offset Plaintiff's child support payment. (Shapiro Decl., ¶ 8; Ex. 5.)

6 The Commissioner filed a response, which did not assent or object to § 406(b) fees.
7 The Commissioner was not a party to the contingent fee agreement between Johnson and
8 Shapiro, and offered an analysis of the fee request in his role "resembling that of trustee"
9 for Plaintiff. Gisbrecht v. Barnhart, 535 U.S. 789, 798 n.6 (2002).

10 II. APPLICABLE LAW

11 42 U.S.C. § 406(b)(1) provides as follows:

12 Whenever a court renders a judgment favorable to a claimant under this
13 subchapter who was represented before the court by an attorney, the
14 court may determine and allow as part of its judgment a reasonable fee
15 for such representation, not in excess of 25 percent of the total of the
16 past-due benefits to which the claimant is entitled by reason of such
17 judgment

18 In Gisbrecht, the United States Supreme Court gave this guidance in determining the
19 reasonableness of § 406(b) fees:

20 [Section] 406(b) does not displace contingent-fee agreements as the
21 primary means by which fees are set for successfully representing Social
22 Security benefits claimants in court. Rather, § 406(b) calls for court
23 review of such arrangements as an independent check, to assure that
24 they yield reasonable results in particular cases. Congress has provided
25 one boundary line: Agreements are unenforceable to the extent that they
26 provide for fees exceeding 25 percent of the past-due benefits

27 Within the 25 percent boundary, the attorney for the successful
28

1 claimant must show that the fee sought is reasonable for the services
2 rendered.

3 Gisbrecht, 535 U.S. at 807 (footnotes omitted).

4 The Ninth Circuit in Crawford v. Astrue, 586 F.3d 1142 (9th Cir. 2009), applying
5 Gisbrecht, instructed that district courts must look to the fee agreement and test it for
6 reasonableness by examining whether the amount needs to be reduced. Id. at 1149.

7 District courts “may properly reduce the fee for substantial performance, delay, or benefits
8 that are not in proportion to the time spent on the case.” Id. at 1151 citing Gisbrecht, 535
9 U.S. at 808. Lodestar computations are considered as an aid in assessing the
10 reasonableness of the fee. Gisbrecht, 535 U.S. at 808.

11 III. DISCUSSION

12 Johnson signed a standard 25% contingent fee agreement with Shapiro, the
13 maximum allowed by 406(b). There is no basis for finding any fraud or overreaching in the
14 making of the agreement.

15 25% of Plaintiff’s awarded past benefits of \$31,900 is \$7,975.00. Shapiro seeks
16 \$7,900.75, less than 25 percent of Plaintiff’s past due benefits. The Law Offices of
17 Lawrence D. Rohlfing expended 20.1 hours of attorney time at \$190.89/hour (\$3,836.89)
18 and 3.60 hours of paralegal time at \$125/hour (\$450.00) for a total of \$4,286.89 for 23.7
19 hours. (Shapiro Decl., ¶ 5, Ex. 4.) The fee amount requested would be an effective hourly
20 rate of approximately \$333.37 per hour for 23.7 hours. The hourly rate recovered is within
21 the range of awards in other 406(b) cases, including Crawford, 586 F.3d at 1153 (approving
22 contingent fee awards that resulted in effective hourly rates of \$875 and \$902).

23 Neither the character of the representation nor the results achieved suggest that the
24 fee sought is unreasonable. Shapiro was not responsible for any delay in the case.

25 The Court concludes that the fee sought is reasonable for the services rendered.

26 ///

27 ///

28

1 **IV. DISPOSITION**

2 **IT IS HEREBY ORDERED** that the motion for attorney’s fees is granted. The Court
3 hereby awards to Brian C. Shapiro attorney’s fees pursuant to 42 U.S.C. § 406(b) in the
4 amount of \$7,900.75. Shapiro shall not reimburse Alfred D. Johnson the amount of
5 \$3,875.00 for EAJA fees previously paid by the Commissioner because the EAJA fees were
6 never received, but were taken by the Treasury to satisfy Alfred D. Johnson’s other
7 obligations.

8 **IT IS SO ORDERED.**

9
10 Dated: November 28, 2017

/s/ John E. McDermott
11 JOHN E. MCDERMOTT
12 UNITED STATES MAGISTRATE JUDGE
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28