

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
EASTERN DISTRICT OF CALIFORNIA

WENDELL W. CUMMINS,)	1:07-cv-00234-JLT
)	
Plaintiff,)	
)	ORDER GRANTING COUNSEL’S MOTION
v.)	FOR ATTORNEY FEES PURSUANT TO 42
)	U.S.C. § 406(b)
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	(Doc. 30)
)	
Defendant.)	
)	

Denis Bourgeois Haley, (“Counsel”) attorney for Plaintiff Wendell Cummins, seeks an award of attorney fees pursuant to 42 U.S.C. § 406(b). (Doc. 30). Defendant has not opposed the motion.¹ For the following reasons, the motion for attorney fees is **GRANTED**.

I. Factual and Procedural History

Plaintiff and Counsel entered into a contingent fee agreement, which provided Plaintiff would pay twenty-five percent of any awarded past due benefits on February 9, 2007. (Doc. 30, Exh. 1).

On February 8, 2007, Plaintiff filed a complaint for review of the administrative decision denying him benefits. (Doc. 1). The Court concluded the decision was not supported by

¹ On May 2, 2011, the Court directed Defendant to file an opposition or notice of non-opposition to Counsel’s motion within twenty-one days of service, or by May 23, 2011. (Doc. 32). However, Defendant failed to comply. Therefore, Defendant has waived any objections to the motion.

1 substantial evidence in the record and issued an order remanding the case pursuant to 42 U.S.C. §
2 405(g) for further consideration on September 11, 2008. (Doc. 25). Following the entry of
3 judgment in favor of Plaintiff (Doc. 26), the parties stipulated to an award of \$3,450 in attorney
4 fees pursuant to the Equal Access Justice Act (Doc. 28), which was awarded on February 26,
5 2009 (Doc. 29).

6 On January 14, 2011, Plaintiff received a notice of a “fully favorable decision” from an
7 administrative law judge. (Doc. 30, Exh. 2). Plaintiff received a “Notice of Award,” which
8 indicated he was entitled to retroactive benefits beginning September 2005. (Doc. 30, Exh. 3).

9 **II. Attorney Fees under § 406(b)**

10 An attorney may seek an award of attorney fees for representation of a Social Security
11 claimant who is awarded benefits:

12 Whenever a court renders a judgment favorable to a claimant under [42 USC § 401,
13 *et seq*] who was represented before the court by an attorney, the court may determine
14 and allow as part of its judgment a reasonable fee for such representation, not in
excess of 25 percent of the total of the past-due benefits to which the claimant is
entitled by reason of such judgment. . . .

15 42 U.S.C. § 406(b)(1)(A); *see also* *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002) (Section
16 406(b) controls fees awarded for representation of Social Security claimants). A contingency fee
17 agreement is unenforceable if it provides for fees exceeding twenty-five percent of past-due
18 benefits. *Id.* at 807.

19 **III. Discussion and Analysis**

20 District courts “have been deferential to the terms of contingency fee contracts § 406(b)
21 cases.” *Hern v. Barnhart*, 262 F.Supp.2d 1033, 1037 (N.D. Ca. 2003). However, the Court
22 must review contingent-fee arrangements “as an independent check, to assure that they yield
23 reasonable results in particular cases.” *Gisbrecht*, 535 U.S. at 807. In doing so, the Court should
24 consider “the character of the representation and the results the representative achieved.” *Id.* at
25 808. In addition, the Court should consider whether the attorney performed in a substandard
26 manner or engaged in dilatory conduct or excessive delays, and whether the fees are “excessively
27 large in relation to the benefits received.” *Crawford v. Astrue*, 586 F.3d 1142, 1149 (9th Cir.
28 2009) (en banc).

1 In this case, Plaintiff willingly entered into the contingent fee agreement in which he
2 agreed to pay twenty-five percent of any awarded retroactive benefits. Counsel accepted the risk
3 of loss in the representation and spent 23.7 hours on the case. (Doc. 30 at 3). Counsel provided
4 a record of the time spent on the matter, which establishes the amount of time spent on the case
5 was reasonable. (Doc. 30, Exh. 4).

6 As a result of Counsel's work, she secured a remand of the matter to an administrative
7 law judge, and, ultimately, the award of benefits to Plaintiff. For this, Counsel requests a fee of
8 \$9,000 under the fee contract. This is much less than the amount to which she would be entitled
9 under the contract. Because Plaintiff expects to receive \$59,038.50 in benefits, \$14,759.63 would
10 be awardable under the agreement. *Id.* Because \$3,450.00 was paid under the EAJA, the net
11 cost to Plaintiff is \$5,550.00. Notably, Plaintiff and Defendant did not oppose the motion,
12 thereby indicating their belief that the fees requested are reasonable.

13 **IV. Conclusion and Order**

14 The fees sought by Counsel are reasonable and not in excess of the twenty-five percent
15 maximum permitted under 42 U.S.C. §406(b). Further, there is no indication Counsel performed
16 in a substandard manner or engaged in dilatory conduct.

17 Based upon the foregoing, **IT IS HEREBY ORDERED:**

- 18 1. Counsel's motion for attorney fees pursuant to §406(b) in the amount of \$9,000 is
19 **GRANTED;**
- 20 2. The Commissioner SHALL certify the fee award, in the amount of \$9,000, to be
21 paid directly to Counsel; and
- 22 3. Counsel SHALL refund \$3,450 to Plaintiff Wendell Cummins.

23
24 IT IS SO ORDERED.

25 Dated: June 8, 2011

26 /s/ Jennifer L. Thurston
27 UNITED STATES MAGISTRATE JUDGE
28