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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

LETICIA ANN ANDRADE,) Case No.: 1:10-cv-2148-AWI- JLT
)
Plaintiff,) FINDINGS AND RECOMMENDATIONS
) GRANTING COUNSEL’S MOTION FOR
v.) ATTORNEY FEES PURSUANT TO
) 42 U.S.C. § 406(b)
COMMISSIONER OF SOCIAL SECURITY,)
) (Doc. 32, 36)
Defendant.)
)
)

Sengthiene Bosavanh, counsel for Leticia Ann Andrade, seeks an award of attorney fees pursuant to 42 U.S.C. § 406(b) following an award of benefits to Plaintiff. (Docs. 32, 36) Neither Plaintiff nor Defendant filed a response to the motion. For the following reasons, the Court recommends counsel’s motion for attorney fees be **GRANTED**.

I. Relevant Background

Plaintiff entered into a contingent fee agreement with the attorneys employed at the Law Offices of Jeffrey Milam, including Ms. Bosavanh, on November 15, 2010. (Doc. 32-1 at 1) In relevant part, the agreement provided that if the federal court litigation resulted in past-due benefits paid to Plaintiff, her attorney would receive “**25 (twenty-five) percent** of the past-due benefits resulting from [her] claim or claims.” (*Id.*, emphasis in original)

In November 2010, Plaintiff filed a complaint for review of the administrative decision denying her Social Security benefits. (Doc. 1) The Court determined the administrative law judge

1 erred in the evaluating the credibility of Plaintiff’s subjective complaints. (Doc. 24 at 3-4) Therefore,
2 the Court remanded the matter for further administrative proceedings pursuant to sentence four of 42
3 U.S.C. § 405(g), and judgment was entered in favor of Plaintiff. (Doc. 24 at 4; Doc. 25)

4 Following the remand, Plaintiff received a favorable decision. (*See* Doc. 32-3) The
5 Commissioner determined Plaintiff was “entitled to monthly disability benefits from Social Security
6 beginning in July 2006,” which totaled \$102,960.00. (*Id.* at 1, 5) From this amount, the Commissioner
7 withheld twenty-five percent for payment of Plaintiff’s attorney fees. (*Id.* at 5)

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

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

11 Whenever a court renders a judgment favorable to a claimant under [42 USC § 401, *et*
12 *seq*] who was represented before the court by an attorney, the court may determine and
13 allow as part of its judgment a reasonable fee for such representation, not in excess of
14 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 406(b)
16 controls fees awarded for representation of Social Security claimants). A contingency fee agreement
17 is unenforceable if it provides for fees exceeding twenty-five percent of past-due benefits. *Id.* at 807.

18 **III. Discussion and Analysis**

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

27 In this case, Plaintiff entered into the contingent fee agreement in which she agreed to pay
28 twenty-five percent of any awarded retroactive benefits. Ms. Bosavanh accepted the risk of loss in the

1 representation while representing Plaintiff before the District Court, and expended 55.5 hours on tasks
2 related to the action before the District Court. As a result of counsel’s work before the Court and the
3 agency, the matter was remanded for further proceedings before an administrative law judge, who
4 issued a fully favorable decision and awarded Plaintiff benefits. For this, Ms. Bosavanh “requests a
5 fee of \$25,740.00 under the contingency fee contract.” (Doc. 36 at 3)

6 Significantly, there is no indication Ms. Bosavanh performed in a substandard manner or
7 engaged in severe dilatory conduct to the extent that a reduction in fees is warranted. To the contrary,
8 Ms. Bosavanh actively advocated on behalf of her client and was able to secure a remand for further
9 proceedings, after which Plaintiff was awarded benefits. In addition, there is no evidence that counsel
10 engaged in abusive dilatory conduct that would increase the fees significantly, as she requested only a
11 single extension of time, which was permitted under the terms of the Court’s Scheduling Order. (*See*
12 *Doc. 7 at 4; Doc. 15*) The fees are not “excessively large in relation to the benefits received,” but
13 rather equal the amount permitted by statute. *See Crawford*, 586 F.3d at 1149; 42 U.S.C. §
14 406(b)(1)(A). Finally, although served with the motion and informed of the right to oppose the fee
15 request (*see Doc. 36 at 2*), Plaintiff did not file an opposition and thereby indicates her belief that the
16 fee request is reasonable.

17 **IV. Findings and Recommendations**

18 The Court finds the fees sought by Ms. Bosavanh are reasonable in light of the time expended
19 and results achieved. Moreover, the amount requested does not exceed the twenty-five percent
20 maximum permitted under 42 U.S.C. §406(b). Based upon the foregoing, the Court **RECOMMENDS:**

- 21 1. The motion for attorney fees pursuant to 24 U.S.C. §406(b) be **GRANTED** in the
22 amount of **\$25,740.00**; and
- 23 2. The Commissioner shall pay the amount directly to Counsel, Sengthiene Bosavanh with
24 Milam Law, Inc.

25
26 IT IS SO ORDERED.

27 Dated: April 30, 2018

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