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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
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8 MISTY MARIE HICKS,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.
13

CASE NO. 1:13-CV-0374-SMS

ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES

Doc. 22

14
15 **I. BACKGROUND**

16 In January 2014, this Court granted the stipulation of the parties seeking a sentence four
17 remand of this Social Security action and entry of judgment. Doc.18. The parties then entered into
18 a stipulation for the award of \$2,350.00 in attorney's fees and expenses under the Equal Access to
19 Justice Act (EAJA), 28 U.S.C. § 2412(d), which the Court granted. Docs. 20-21.

20 On remand, the Social Security Administration (SSA) found that Plaintiff was eligible for
21 past-due benefits of \$37,143.80. Doc. 22, Exh. 3. Plaintiff's counsel's instant motion requests
22 \$6,935.00 in attorney's fees under 42 U.S.C. § 406(b),¹ which would equal a combined fee of
23 \$9,285.00 when considered in conjunction with the EAJA award. Doc. 22. Plaintiff was advised
24 that she could file a response to the motion, but she did not file a response. See Doc. 22. The
25 government filed a response to the motion, neither in assent nor objection, offering an analysis to
26

27 ¹ Plaintiff brings this motion for attorney's fees under 42 U.S.C. § 1383(d)(2)(B), which governs awards of fees for work done
28 before the agency, not the district court. Plaintiff seeks an award of fees for work done before the district court; hence, 42 U.S.C. §
406 is the appropriate provision. Plaintiff's analysis is not affected by this substitution. The Court addresses Plaintiff's motion
under 42 U.S.C. § 406.

1 assist the Court. Doc. 23.

2 **II. DISCUSSION**

3 The award of attorney’s fees in social security cases is governed by 42 U.S.C. § 406. 42
4 U.S.C. § 406(b) imposes a 25% cap on the amount that can be awarded to an attorney for the
5 representation of a claimant before the court. “Because the SSA has no direct interest in how much
6 of the award goes to counsel and how much to the disabled person, the district court has an
7 affirmative duty to assure that the reasonableness of the fee is established.” *Crawford v. Astrue*,
8 586 F.3d 1142, 1149 (9th Cir. 2009). In assessing the reasonableness of a fee request, the district
9 court should not start with the lodestar calculation, but with the contingent-fee agreement, and
10 consider “the character of the representation and the results the representative achieved.” *Id.* at
11 1151 (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 808 (2002)). The lower court “may properly
12 reduce the fee for substandard performance, delay, or benefits that are not in proportion to the time
13 spent on the case.” *Id.* (citing *Gisbrecht*, 535 U.S. at 808).

14 Here, Plaintiff has attached 1) a valid contingency fee agreement between Plaintiff and her
15 attorneys indicating that fees of 25% of past-due benefits would be sought upon successful judicial
16 review; 2) a notice of favorable decision from SSA; 3) a notice of award from SSA, indicating the
17 total back payments due and the monthly payments amounts; and 4) a time sheet indicating 18.4
18 attorney hours and 3.4 paralegal hours spent preparing this case before the district court. The 25%
19 contingency fee agreement is within the statutory limit and is reasonable considering the character
20 of the representation and the results achieved. Plaintiff has requested a combined total of
21 \$9,285.00, which represents 25% of her past-due benefits.

22 There is no evidence presented which requires a reduction in the contingency fee amount.
23 Although the government notes that the favorable decision at the administrative level was based
24 on new testimony and not based on evidence Plaintiff presented, Plaintiff’s counsel obtained a
25 remand of the case for further proceedings, and there is no evidence of substandard performance.
26 There is also no evidence of undue delay in litigating the case. Lastly, there is no evidence that the
27 benefits are not in proportion to the time spent on the case. Although the amount results in a high
28 effective hourly rate of \$426.00, the Court respects the “primacy of lawful attorney-client fee

1 agreements.” *See Gisbrecht*, 535 U.S. at 793. “Lodestar fees will generally be much less than
2 contingent fees because the lodestar method tends to under-compensate attorneys for the risk they
3 undertook in representing their clients and does not account for the fact that the statute limits
4 attorneys’ fees to a percentage of past-due benefits and allows no recovery from future benefits,
5 which may far exceed the past-due benefits awarded.” *Crawford*, 586 F.3d at 1150. The rate takes
6 into account the inherent risk of contingent-fee cases.

7 Therefore, the Court finds that counsel’s request for \$9,285.00 is reasonable. Because
8 counsel was previously awarded \$2,350.00 in attorney’s fees under the EAJA, the Court will
9 award \$6,935.00 in attorney’s fees pursuant to 42 U.S.C. § 406(b). No refund of EAJA fees to
10 Plaintiff will be required.

11 **III. ORDER**

12 For the foregoing reasons, the Court awards \$6,935.00 in attorney’s fees pursuant to 42
13 U.S.C. § 406(b).

14
15 IT IS SO ORDERED.

16 Dated: March 29, 2016

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE