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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GEORGE WAYNE ANDERSON,  
Plaintiff,  
v.  
CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,  
Defendant.

No. 2:12-cv-2575-EFB

ORDER

Counsel for plaintiff in the above-entitled action seeks an award of attorney fees in the amount of \$17,206.47 pursuant to 42 U.S.C. § 406(b). Counsel represented plaintiff both in this action and in a prior federal case related to the same application for benefits. *See Anderson v. Colvin*, 2:09-cv-3416-CMK. In this action, the court previously awarded plaintiff a fee of \$4,476.00 pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d). ECF No. 27. In plaintiff’s prior case, counsel was awarded \$6,167.53 pursuant to the EAJA. *Anderson v. Colvin*, 2:09-cv-3416-CMK, ECF No. 27. Plaintiff entered into a fee agreement with his attorney which provides that plaintiff would pay his attorney 25 percent of any past-due benefits won as a result of the appeal in his case, plus expenses. *Id.* at 37 (Ex. F). Counsel contends that a fee of 25 percent of past benefits is reasonable for his seven years of work on this case, but that he is only

1 seeking a lesser amount of \$17,206.47.<sup>1</sup> ECF No. 27 at 3. Plaintiff's counsel submitted a  
2 declaration showing that he spent 90.6 hours on plaintiff's case.

3 42 U.S.C. § 406(b)(1)(A) provides, in relevant part:

4 Whenever a court renders a judgment favorable to a claimant under  
5 this subchapter who was represented before the court by an  
6 attorney, the court may determine and allow as part of its judgment  
7 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.

8 Rather than being paid by the government, fees under the Social Security Act are awarded  
9 out of the claimant's disability benefits. *Russell v. Sullivan*, 930 F.2d 1443, 1446 (9th Cir. 1991),  
10 *receded from on other grounds*, *Sorenson v. Mink*, 239 F.3d 1140, 1149 (9th Cir. 1991). While  
11 25 percent of past due benefits is the statutory maximum fee, it is not an automatic entitlement;  
12 the court also must ensure that the requested fee is reasonable. *Bisbrecht v. Barnhart*, 535 U.S.  
13 789, 808-09 (2002) ("We hold that § 406(b) does not displace contingent-fee agreements within  
14 the statutory ceiling; instead, § 406(b) instructs courts to review for reasonableness fees yielded  
15 by those agreements."). "Within the 25 percent boundary . . . the attorney for the successful  
16 claimant must show that the fee sought is reasonable for the services rendered." *Id.* at 807.

17 After plaintiff was found disabled, he was awarded past-due benefits in the amount of  
18 \$104,623.00. ECF No. 27-2. Through the instant motion, plaintiff's counsel seeks an award of  
19 \$17,206.47, which is substantially less than the 25 percent statutory maximum. Additionally,  
20 plaintiff's counsel has already been awarded fees under EAJA in the amount of \$10,643.53. ECF  
21 No. 27; *Anderson v. Colvin*, 2:09-3416-CMK, ECF No. 27. Counsel provides that upon receipt of  
22 a fee award in the amount of \$17,934.50, he will refund the plaintiff the sum of \$10,643.53  
23 previously awarded under the EAJA. ECF No. 29. Thus, plaintiff's counsel seeks a total of  
24 \$17,934.50. This would constitute an hourly rate of \$197.95, based on the 90.6 hours counsel  
25 spent on the case. Based on the risk of loss taken in representing plaintiff, the quality of  
26 counsel's representation, and his experience in the field of Social Security law, the court finds

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27 <sup>1</sup> The Commissioner states that she has no objection to award for the amount sought.  
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1 that rate to be reasonable. *See Hearn v. Barnhart*, 262 F. Supp. 2d 1033, 1037 (N.D. Cal. 2003)  
2 (discussing cases where courts granted fees based on hourly rates from \$187.55 to \$694.44, and  
3 awarding effective hourly rate of \$450.00). Further, given the result achieved in this case, the  
4 court finds the amount of hours expended to be reasonable. Therefore, plaintiff's counsel should  
5 be awarded the sum of \$17,206.47 in fees pursuant to 42 U.S.C. § 406(b).<sup>2</sup>

6 Accordingly, it is hereby ORDERED that:

- 7 1. Plaintiff's counsel's motion for attorney's fees (ECF No. 27) is granted;
- 8 2. Plaintiff's counsel is awarded \$17,206.47 in fees pursuant to 42 U.S.C. § 406(b); and
- 9 3. Upon receipt of the \$17,206.47 award, counsel shall refund to plaintiff the sum of  
10 \$10,643.53 previously awarded under the EAJA.

11 DATED: December 3, 2015.

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13 EDMUND F. BRENNAN  
14 UNITED STATES MAGISTRATE JUDGE

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<sup>2</sup> As mentioned herein, plaintiff's counsel pursued, and was awarded, fees under the  
26 EAJA in the amount of \$10,643.53. Ordinarily, the EAJA award offsets any attorney's fee  
27 received pursuant to a contingency fee agreement. *See Gisbrecht*, 535 U.S. at 796 (holding that  
28 where attorney's fees are awarded under both EAJA and § 406(b), the attorney must refund the  
smaller of the two awards to the plaintiff). Accordingly, counsel is directed to refund to plaintiff  
the sum of \$10,643.53 previously awarded under the EAJA.