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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CINDI DEARMON,
Plaintiff,
v.
CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

No. 2:13-cv-0230 GEB CKD PS

FINDINGS AND RECOMMENDATIONS

Based on 42 U.S.C. § 406(b), counsel for plaintiff in the above-entitled action seeks an award of attorney fees in the amount of \$12,195.73 for 41.6 hours of professional time devoted to the representation of plaintiff before this court. Counsel concedes that this amount should be offset in the amount of \$4,242.48 for fees previously awarded under EAJA.

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

Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine 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.

Rather than being paid by the government, fees under the Social Security Act are awarded out of the claimant's disability benefits. Russell v. Sullivan, 930 F.2d 1443, 1446 (9th Cir. 1991),

1 receded from on other grounds, Sorenson v. Mink, 239 F.3d 1140, 1149 (9th Cir. 2001).

2 However, the 25 percent statutory maximum fee is not an automatic entitlement; the court also
3 must ensure that the requested fee is reasonable. Gisbrecht v. Barnhart, 535 U.S. 789, 808-09
4 (2002) (“We hold that § 406(b) does not displace contingent-fee agreements within the statutory
5 ceiling; instead, § 406(b) instructs courts to review for reasonableness fees yielded by those
6 agreements.”). “Within the 25 percent boundary ... the attorney for the successful claimant must
7 show that the fee sought is reasonable for the services rendered.” Id. at 807.

8 Counsel seeks fees for 41.6 hours. Based on the quality of counsel’s representation and
9 the results achieved in this case, the undersigned finds the amount of hours expended to be
10 reasonable. The hourly rate of \$293.17 is also reasonable. Accordingly, the undersigned will
11 recommend that an award in the amount of attorney fees requested be made.

12 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff’s counsel be awarded
13 \$12,195.73 in attorney fees pursuant to 28 U.S.C. § 406, to be offset in the amount of \$4,242.48
14 previously awarded under EAJA.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
20 within the specified time may waive the right to appeal the District Court’s order. Martinez v.
21 Ylst, 951 F.2d 1153 (9th Cir. 1991).

22 Dated: October 28, 2015

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24 CAROLYN K. DELANEY
25 UNITED STATES MAGISTRATE JUDGE

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