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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SARA LEANN KYKER,	No. 2:14-cv-00534 AC
Plaintiff,	
v.	<u>ORDER</u>
NANCY A. BERYHILL, Acting Commissioner of Social Security,	
Defendant.	

Plaintiff sought judicial review of a final decision of the Commissioner of Social Security (“Commissioner”), denying her the application for a period of disability and disability insurance benefits (“DIB”) benefits under Title II of the Social Security Act (“the Act”). On May 29, 2015, the court granted in part plaintiff’s motion for summary judgment, denied the Commissioner’s cross-motion for summary judgment, and remanded the action to the Commissioner for immediate payment of benefits. ECF No. 15.

Now pending before the court is plaintiff’s February 28, 2017 renewed motion for an award of attorney’s fees pursuant to 42 U.S.C. § 406(b). ECF No. 33. On March 1, 2017, defendant filed a response asserting that defendant “is not in a position to either assent or object” to the fee request. ECF No. 34. For the reasons set forth below, the motion will be granted.

1 I. REASONABLENESS OF FEE REQUEST

2 At the outset of the representation, plaintiff and her counsel entered into a contingent-fee
3 agreement. ECF No. 33-1. Pursuant to that agreement plaintiff’s counsel now seeks attorney’s
4 fees in the amount of \$15,867.00 which represents 25% of the retroactive disability benefits
5 received by plaintiff on remand (\$15,867.00 withheld for attorney’s fees pursuant to the
6 Administration’s letter to counsel at ECF No. 33-7), for 32.6 hours of attorney time expended on
7 this matter. ECF No. 33-3. Plaintiff will be immediately credited the \$6,295 in EAJA fees
8 already received by plaintiff’s counsel. ECF No. 33 at 1-2.

9 Attorneys are entitled to fees for cases in which they have successfully represented social
10 security claimants:

11 Whenever a court renders a judgment favorable to a claimant under
12 this subchapter who was represented before the court by an
13 attorney, the court may determine and allow as part of its judgment
14 a reasonable fee for such representation, not in excess of 25 percent
15 of the total of the past-due benefits to which the claimant is entitled
by reason of such judgment, and the Commissioner of Social
Security may . . . certify the amount of such fee for payment to such
attorney out of, and not in addition to, the amount of such past-due
benefits.

16 42 U.S.C. § 406(b)(1)(A). “In contrast to fees awarded under fee-shifting provisions such as 42
17 U.S.C. § 1988, the fee is paid by the claimant out of the past-due benefits awarded; the losing
18 party is not responsible for payment.” Crawford v. Astrue, 586 F.3d 1142, 1147 (9th Cir. 2009)
19 (en banc) (citing Gisbrecht v. Barnhart, 535 U.S. 789, 802 (2002)). The goal of fee awards under
20 § 406(b) is “to protect claimants against “inordinately large fees” and also to ensure that
21 attorneys representing successful claimants would not risk “nonpayment of [appropriate] fees.””
22 Parrish v. Comm’r of Soc. Sec. Admin., 698 F.3d 1215, 1217 (9th Cir. 2012) (quoting Gisbrecht,
23 535 U.S. at 805).

24 The 25% statutory maximum fee is not an automatic entitlement, and the court must
25 ensure that the fee requested is reasonable. Gisbrecht, 535 U.S. at 808-09 (“406(b) does not
26 displace contingent-fee agreements within the statutory ceiling; instead, § 406(b) instructs courts
27 to review for reasonableness fees yielded by those agreements”). “Within the 25 percent
28 boundary . . . the attorney for the successful claimant must show that the fee sought is reasonable

1 for the services rendered.” Id. at 807. “[A] district court charged with determining a reasonable
2 fee award under § 406(b)(1)(A) must respect ‘the primacy of lawful attorney-client fee
3 arrangements,’ ‘looking first to the contingent-fee agreement, then testing it for reasonableness.’”
4 Crawford, 586 F.3d at 1149 (quoting Gisbrecht, 535 U.S. at 793, 808).

5 In determining whether the requested fee is reasonable, the court considers “‘the character
6 of the representation and the results achieved by the representative.’” Crawford, 586 F.3d at 1151
7 (quoting Gisbrecht, 535 U.S. at 808). In determining whether a reduction in the fee is warranted,
8 the court considers whether the attorney provided “substandard representation or delayed the
9 case,” or obtained “benefits that are not in proportion to the time spent on the case.” Id. Finally,
10 the court considers the attorney’s record of hours worked and counsel’s regular hourly billing
11 charge for non-contingent cases. Crawford, 586 F.3d at 1151-52 (citing Gisbrecht, 535 U.S. at
12 808); see also, E.D. Cal. R. 293(c)(1) (in fixing attorney’s fees the court considers “the time and
13 labor required”). Below, the court will consider these factors in assessing whether the fee
14 requested by counsel in this case pursuant to 42 U.S.C. § 406(b) is reasonable.

15 Here, plaintiff’s counsel is an experienced attorney who secured a successful result for
16 plaintiff. See Declaration of Monica Perales, ECF No. 33 at 10, ¶ 7. There is no indication that a
17 reduction of fees is warranted due to any substandard performance by counsel. There is also no
18 evidence that plaintiff’s counsel engaged in any dilatory conduct resulting in excessive delay.
19 The court finds that \$ 15,867.00, which represents 25% of the past-due benefits paid to plaintiff, is
20 not excessive in relation to the benefits awarded. In making this determination, the court
21 recognizes the contingent fee nature of this case and counsel’s assumption of the risk of going
22 uncompensated in agreeing to represent plaintiff on such terms. See Crawford, 586 F.3d at 1152
23 (“[t]he attorneys assumed significant risk in accepting these cases, including the risk that no
24 benefits would be awarded or that there would be a long court or administrative delay in resolving
25 the cases”). Finally, counsel has submitted a detailed billing statement in support of the requested
26 fee. ECF No. 33-3.

27 Accordingly, for the reasons stated above, the court concludes that the fees sought by
28 counsel pursuant to § 406(b) are reasonable.

1 II. OFFSET FOR EAJA FEES

2 An award of § 406(b) fees must be offset by any prior award of attorney’s fees granted
3 under the Equal Access to Justice Act (“EAJA”). 28 U.S.C. § 2412; Gisbrecht, 535 U.S. at 796.
4 Here, plaintiff’s attorney was previously awarded \$6,295.00 in EAJA fees. See ECF No. 33 at 1.
5 Counsel therefore must remit that amount to plaintiff.


6 Accordingly, IT IS HEREBY ORDERED that:

7 1. Plaintiff’s Motion for attorney Fees under 42 U.S.C. § 406(b) (ECF No. 33), is
8 GRANTED;

9 2. Counsel for plaintiff is awarded \$15,867.00 in attorney’s fees under § 406(b); the
10 Commissioner shall certify that amount to be paid to counsel from the funds previously withheld
11 for the payment of such fees (see ECF No. 33-7) and

12 3. Counsel for plaintiff is directed to remit to plaintiff the amount of \$6,295.00 for EAJA
13 fees previously paid to counsel by the Commissioner.

14 DATED: June 15, 2017

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16 ALLISON CLAIRE
17 UNITED STATES MAGISTRATE JUDGE
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