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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFEREY OVERBECK,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

No. 2:14-cv-02645 CKD

ORDER

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 \$12,385.50 for 31.45 hours of professional time devoted to the representation of plaintiff before this court. This amount contemplates no offset for fees previously awarded under EAJA, as plaintiff did not seek EAJA fees in this case. Defendant has filed a response analyzing the request and determining that plaintiff’s counsel’s calculation appears to be correct, though defendant takes no position on the reasonableness of the request.

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.

1 Rather than being paid by the government, fees under the Social Security Act are awarded out of
2 the claimant's disability benefits. Russell v. Sullivan, 930 F.2d 1443, 1446 (9th Cir. 1991),
3 receded from on other grounds, Sorenson v. Mink, 239 F.3d 1140, 1149 (9th Cir. 2001).

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

10 Counsel seeks fees for 31.45 hours. Based on the quality of counsel's representation and
11 the results achieved in this case, the undersigned finds the amount of hours expended to be
12 reasonable. The hourly rate of \$393.82 is also reasonable. Accordingly, the undersigned will
13 award the amount of attorney fees requested.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff's motion for attorney fees (ECF No. 22) is granted; and
- 16 2. Plaintiff's counsel is awarded \$12,385.50 in attorney fees pursuant to 28 U.S.C. § 406.

17 Dated: December 8, 2017



18 CAROLYN K. DELANEY
19 UNITED STATES MAGISTRATE JUDGE

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