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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RENEE G. SCARBOROUGH,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

No. 2:15-cv-0146 DB

ORDER

Plaintiff brought this action seeking judicial review of a final administrative decision denying an application for Disability Insurance Benefits under Title II of the Social Security Act and for Supplemental Security Income under Title XVI of the Act. By order filed March 7, 2017, plaintiff's motion for summary judgment was granted, the decision of the Commissioner was reversed and the case was remanded for the immediate award of benefits.¹ (ECF No. 26.)

On December 7, 2017, counsel for plaintiff filed a motion for an award of attorney's fees pursuant to 42 U.S.C. § 406(b). (ECF No. 31.) At the outset of the representation, plaintiff and plaintiff's counsel entered into a contingent-fee agreement. (ECF No. 31-4 at 1-2.)² Pursuant to

¹ Both parties have previously consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c). (See ECF Nos. 10 & 19.)

² Page number citations such as this one are to the page number reflected on the court's CM/ECF system and not to page numbers assigned by the parties.

1 that agreement plaintiff's counsel now seeks attorney's fees in the amount of \$15,999.75, which
2 represents 25% of the retroactive disability benefits received by plaintiff on remand, for
3 approximately 31.7 hours of attorney time expended on this matter. (ECF No. 31 at 3; ECF No.
4 31-3 at 1.) Defendant has not opposed plaintiff's motion.

5 Attorneys are entitled to fees for cases in which they have successfully represented social
6 security claimants.

7 Whenever a court renders a judgment favorable to a claimant under
8 this subchapter who was represented before the court by an
9 attorney, the court may determine and allow as part of its judgment
10 a reasonable fee for such representation, not in excess of 25 percent
11 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.

12 42 U.S.C. § 406(b)(1)(A). "In contrast to fees awarded under fee-shifting provisions such as 42
13 U.S.C. § 1988, the fee is paid by the claimant out of the past-due benefits awarded; the losing
14 party is not responsible for payment." Crawford v. Astrue, 586 F.3d 1142, 1147 (9th Cir. 2009)
15 (en banc) (citing Gisbrecht v. Barnhart, 535 U.S. 789, 802 (2002)). Although an attorney fee
16 award pursuant to 42 U.S.C. § 406(b) is not paid by the government, the Commissioner has
17 standing to challenge the award. Craig v. Sec'y Dep't of Health & Human Servs., 864 F.2d 324,
18 328 (4th Cir. 1989), abrogated on other grounds in Gisbrecht, 535 U.S. at 807. The goal of fee
19 awards under § 406(b) is to provide adequate incentive to attorneys for representing claimants
20 while ensuring that the usually meager disability benefits received are not greatly depleted.
21 Cotter v. Bowen, 879 F.2d 359, 365 (8th Cir. 1989).

22 The 25% statutory maximum fee is not an automatic entitlement, and the court must
23 ensure that the fee actually requested is reasonable. Gisbrecht, 535 U.S. at 808-09 ("[Section]
24 406(b) does not displace contingent-fee agreements within the statutory ceiling; instead, § 406(b)
25 instructs courts to review for reasonableness fees yielded by those agreements."). "Within the 25
26 percent boundary . . . the attorney for the successful claimant must show that the fee sought is
27 reasonable for the services rendered." Id. at 807. "[A] district court charged with determining a
28 reasonable fee award under § 406(b)(1)(A) must respect 'the primacy of lawful attorney-client fee

1 arrangements,’ ‘looking first to the contingent-fee agreement, then testing it for reasonableness.’”
2 Crawford, 586 F.3d at 1149 (quoting Gisbrecht, 535 U.S. at 793 & 808).

3 The Supreme Court has identified five factors that may be considered in determining
4 whether a fee award under a contingent-fee arrangement is unreasonable and therefore subject to
5 reduction by the court: (1) the character of the representation; (2) the results achieved by the
6 representative; (3) whether the attorney engaged in dilatory conduct in order to increase the
7 accrued amount of past-due benefits; (4) whether the benefits are large in comparison to the
8 amount of time counsel spent on the case; and (5) the attorney’s record of hours worked and
9 counsel’s regular hourly billing charge for noncontingent cases. Crawford, 586 F.3d at 1151-52
10 (citing Gisbrecht, 535 U.S. at 808). Below, the court will consider these factors in assessing
11 whether the fee requested by counsel in this case pursuant to 42 U.S.C. § 406(b) is reasonable.

12 Here, there is no indication that a reduction of fees is warranted due to any substandard
13 performance by counsel. Rather, plaintiff’s counsel is an experienced attorney who secured a
14 successful result for plaintiff. There is also no evidence that plaintiff’s counsel engaged in any
15 dilatory conduct resulting in excessive delay. The court finds that the \$15,999.75 fee, which
16 represents 25% of the past-due benefits paid to plaintiff, is not excessive in relation to the benefits
17 awarded. In making this determination, the court recognizes the contingent fee nature of this case
18 and counsel’s assumption of the risk of going uncompensated in agreeing to represent plaintiff on
19 such terms. See Hearn v. Barnhart, 262 F. Supp.2d 1033, 1037 (N.D. Cal. 2003). Finally,
20 counsel has submitted a detailed billing statement in support of the requested fee. (ECF No. 31-
21 3.)

22 Accordingly, for the reasons stated above, the court concludes that the fees sought by
23 counsel pursuant to § 406(b) are reasonable. See generally Azevedo v. Commissioner of Social
24 Security, No. 1:11-cv-1341 AWI SAB, 2013 WL 6086666, at *2 (E.D. Cal. Nov. 19, 2013)
25 (granting petition pursuant to 406(b) for \$17,893.75 in attorney’s fees); Coulter v. Commissioner
26 of Social Security, No. 1:10-cv-1937 AWI JLT, 2013 WL 5969674, at *2 (E.D. Cal. Nov. 8,
27 2013) (recommending award of \$15,084.23 in attorney’s fees pursuant to 406(b)); Taylor v.
28 Astrue, No. 1:06-cv-00957-SMS, 2011 WL 836740, at *2 (E.D. Cal. Mar. 4, 2011) (granting

1 petition pursuant to 406(b) for \$20,960 in attorneys' fees); Jamieson v. Astrue, No. 1:09cv0490
2 LJO DLB, 2011 WL 587096, at *2 (E.D. Cal. Feb. 9, 2011) (recommending award of \$34,500 in
3 attorney fees pursuant to 406(b)).

4 An award of § 406(b) fees is, however, offset by any prior award of attorney's fees
5 granted under the Equal Access to Justice Act ("EAJA"). 28 U.S.C. § 2412; Gisbrecht, 535 U.S.
6 at 796. Here, plaintiff's counsel was previously awarded \$5,800 in EAJA fees (see ECF No. 30)
7 and the award under § 406(b) must be offset by that amount.


8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Plaintiff's December 7, 2017 motion for attorney fees under 42 U.S.C. § 406(b), (ECF
10 No. 31), is granted;

11 2. Counsel for plaintiff is awarded \$15,999.75 in attorney fees under § 406(b). The
12 Commissioner is directed to pay the fee forthwith and remit to plaintiff the remainder any
13 withheld benefits; and

14 3. Upon receipt of the \$15,999.75 in attorney fees pursuant to § 406(b), counsel shall
15 reimburse plaintiff in the amount of \$5,800 previously paid by the government under the EAJA.

16 Dated: May 17, 2018

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20 DEBORAH BARNES
21 UNITED STATES MAGISTRATE JUDGE

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