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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LYNN EILEEN GNIBUS,  
Plaintiff,  
v.  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
Defendant.

No. 2:15-cv-1669 AC

ORDER

Plaintiff sought judicial review of a final decision of the Commissioner of Social Security (“Commissioner”), denying her application for disability insurance benefits (“DIB”) benefits under Title II of the Social Security Act (“the Act”). On March 13, 2017, the court granted plaintiff’s motion for summary judgment, denied the Commissioner’s cross-motion for summary judgment, and remanded the action to the Commissioner with instructions to award benefits. ECF No. 19.

Now pending before the court is plaintiff’s September 1, 2017 motion for an award of attorney’s fees pursuant to 42 U.S.C. § 406(b). ECF No. 23. On September 1, 2017, defendant filed a response asserting that defendant “has no objection to the fee request.” ECF No. 24. 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. 23-1. Pursuant to that agreement plaintiff’s counsel now seeks attorney’s  
4 fees in the amount of \$8,300.00, which represents 25% of the \$33,238.20 in retroactive disability  
5 benefits received by plaintiff on remand for 22.3 hours of attorney time expended on this matter.  
6 ECF Nos. 23 at 3-6.

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

9 Whenever a court renders a judgment favorable to a claimant under  
10 this subchapter who was represented before the court by an  
11 attorney, the court may determine and allow as part of its judgment  
12 a reasonable fee for such representation, not in excess of 25 percent  
13 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.

14 42 U.S.C. § 406(b)(1)(A). “In contrast to fees awarded under fee-shifting provisions such as 42  
15 U.S.C. § 1988, the fee is paid by the claimant out of the past-due benefits awarded; the losing  
16 party is not responsible for payment.” Crawford v. Astrue, 586 F.3d 1142, 1147 (9th Cir. 2009)  
17 (en banc) (citing Gisbrecht v. Barnhart, 535 U.S. 789, 802 (2002)). The goal of fee awards under  
18 § 406(b) is “to protect claimants against “inordinately large fees” and also to ensure that  
19 attorneys representing successful claimants would not risk “nonpayment of [appropriate] fees.””  
20 Parrish v. Comm’r of Soc. Sec. Admin., 698 F.3d 1215, 1217 (9th Cir. 2012) (quoting Gisbrecht,  
21 535 U.S. at 805).

22 The 25% statutory maximum fee is not an automatic entitlement, and the court must  
23 ensure that the fee requested is reasonable. Gisbrecht, 535 U.S. at 808-09 (“406(b) does not  
24 displace contingent-fee agreements within the statutory ceiling; instead, § 406(b) instructs courts  
25 to review for reasonableness fees yielded by those agreements”). “Within the 25 percent  
26 boundary . . . the attorney for the successful claimant must show that the fee sought is reasonable  
27 for the services rendered.” Id. at 807. “[A] district court charged with determining a reasonable  
28 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 In determining whether the requested fee is reasonable, the court considers “‘the character  
4 of the representation and the results achieved by the representative.’” Crawford, 586 F.3d at 1151  
5 (quoting Gisbrecht, 535 U.S. at 808). In determining whether a reduction in the fee is warranted,  
6 the court considers whether the attorney provided “substandard representation or delayed the  
7 case,” or obtained “benefits that are not in proportion to the time spent on the case.” Id. Finally,  
8 the court considers the attorney’s record of hours worked and counsel’s regular hourly billing  
9 charge for non-contingent cases. Crawford, 586 F.3d at 1151-52 (citing Gisbrecht, 535 U.S. at  
10 808); see also, E.D. Cal. R. 293(c)(1) (in fixing attorney’s fees the court considers “the time and  
11 labor required”). Below, the court will consider these factors in assessing whether the fee  
12 requested by counsel in this case pursuant to 42 U.S.C. § 406(b) is reasonable.

13 Here, plaintiff’s counsel is an experienced attorney who secured a successful result for  
14 plaintiff. See Declaration of Lawrence D. Rohlfing (“Rohlfing Decl.”) (ECF No. 23) ¶ 6. There  
15 is no indication that a reduction of fees is warranted due to any substandard performance by  
16 counsel. There is also no evidence that plaintiff’s counsel engaged in any dilatory conduct  
17 resulting in excessive delay. The court finds that the \$8,300.00 fee, which represents 25% of the  
18 \$33,238.20 in past-due benefits paid to plaintiff, is not excessive in relation to the benefits  
19 awarded. In making this determination, the court recognizes the contingent fee nature of this case  
20 and counsel’s assumption of the risk of going uncompensated in agreeing to represent plaintiff on  
21 such terms. See Crawford, 586 F.3d at 1152 (“[t]he attorneys assumed significant risk in  
22 accepting these cases, including the risk that no benefits would be awarded or that there would be  
23 a long court or administrative delay in resolving the cases”). Finally, counsel has submitted a  
24 detailed billing statement in support of the requested fee. ECF No. 23-3.

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

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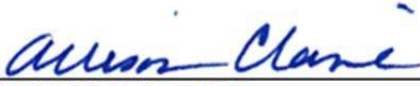
## II. OFFSET FOR EAJA FEES

An award of § 406(b) fees must be offset by any prior award of attorney’s fees granted under the Equal Access to Justice Act (“EAJA”). 28 U.S.C. § 2412; Gisbrecht, 535 U.S. at 796. Here, plaintiff’s attorney was previously awarded \$4,085.00 in EAJA fees. See ECF No. 22. Counsel therefore must remit that amount to plaintiff.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff’s Motion for attorney Fees under 42 U.S.C. § 406(b) (ECF No. 23), is GRANTED;
2. Counsel for plaintiff is awarded \$8,300.00 in attorney’s fees under § 406(b); the Commissioner shall certify that amount to be paid to counsel from the funds previously withheld for the payment of such fees (see ECF No. 23 ¶3; 23-2); and
3. Counsel for plaintiff is directed to remit to plaintiff the amount of \$4,085.00 for EAJA fees previously paid to counsel by the Commissioner.

DATED: October 13, 2017

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE