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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARY FRANCES ANDERSON,

 Plaintiff,

 v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

 Defendant.

No. 2:15-cv-1954 AC

ORDER

Plaintiff sought judicial review of a final decision of the Commissioner of Social Security (“Commissioner”), denying her application for a period of disability and disability insurance benefits (“DIB”) benefits under Title II of the Social Security Act (“the Act”). On March 2, 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. 22.

Now pending before the court is plaintiff’s September 5, 2017 motion for an award of attorney’s fees pursuant to 42 U.S.C. § 406(b). ECF No. 30. Defendant does not assent or oppose the motion. ECF No. 31. For the reasons set forth below, the motion will be granted.

I. REASONABLENESS OF FEE REQUEST

At the outset of the representation, plaintiff and her counsel entered into a contingent-fee

1 agreement. ECF No. 30-1. Pursuant to that agreement plaintiff's counsel now seeks attorney's
2 fees in the amount of \$4,974.60, which he asserts represents 25% of the \$54,884.00 in retroactive
3 disability benefits received by plaintiff on remand (\$13,721.00) less \$8,746.40 already awarded in
4 Equal Justice Act fees, for 73.8 hours of attorney time expended on this matter. ECF Nos. 30 at
5 4-5. The court notes that \$8,746.90 was actually awarded in EAJA fees. ECF No. 29.

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

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

13 42 U.S.C. § 406(b)(1)(A). “In contrast to fees awarded under fee-shifting provisions such as 42
14 U.S.C. § 1988, the fee is paid by the claimant out of the past-due benefits awarded; the losing
15 party is not responsible for payment.” Crawford v. Astrue, 586 F.3d 1142, 1147 (9th Cir. 2009)
16 (en banc) (citing Gisbrecht v. Barnhart, 535 U.S. 789, 802 (2002)). The goal of fee awards under
17 § 406(b) is “to protect claimants against “inordinately large fees” and also to ensure that
18 attorneys representing successful claimants would not risk “nonpayment of [appropriate] fees.””
19 Parrish v. Comm'r of Soc. Sec. Admin., 698 F.3d 1215, 1217 (9th Cir. 2012) (quoting Gisbrecht,
20 535 U.S. at 805).

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

1 Crawford, 586 F.3d at 1149 (quoting Gisbrecht, 535 U.S. at 793, 808).

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

12 Here, plaintiff’s counsel is an experienced attorney who secured a successful result for
13 plaintiff. See Declaration of Robert C. Weems (ECF No. 30 at 9). There is no indication that a
14 reduction of fees is warranted due to any substandard performance by counsel. There is also no
15 evidence that plaintiff’s counsel engaged in any dilatory conduct resulting in excessive delay.
16 The court finds that the \$4,974.10, which represents 25% of the \$54,884.00 in past-due benefits
17 paid to plaintiff less the \$8,746.90 already paid in EAJA fees, is not excessive in relation to the
18 benefits awarded. In making this determination, the court recognizes the contingent fee nature of
19 this case and counsel’s assumption of the risk of going uncompensated in agreeing to represent
20 plaintiff on such terms. See Crawford, 586 F.3d at 1152 (“[t]he attorneys assumed significant
21 risk in accepting these cases, including the risk that no benefits would be awarded or that there
22 would be a long court or administrative delay in resolving the cases”). Finally, counsel has
23 submitted a detailed billing statement in support of the requested fee. ECF No. 30-4.

24 Accordingly, for the reasons stated above, the court concludes that the fees sought by
25 counsel pursuant to § 406(b), as corrected to \$4,974.10 from \$4,974.60, are reasonable.

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II. CONCLUSION

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's Motion for attorney Fees under 42 U.S.C. § 406(b) (ECF No. 30), is GRANTED; and

2. Counsel for plaintiff is awarded \$4,974.10 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. 30-2 at 3).

DATED: September 26, 2017



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE