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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARVEL SCOTT HASE,
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

No. 2:16-cv-2522-KJN
ORDER
(ECF No. 26)

Presently pending before the court is counsel for plaintiff Jesse Kaplan’s motion for attorneys’ fees pursuant to 42 U.S.C. § 406(b), filed on August 13, 2020. (ECF No. 26.)¹ Plaintiff’s counsel seeks an award of \$11,330 (16.3% of plaintiff’s past due benefits of \$69,320 as calculated by the Commissioner of Social Security [“Commissioner”].) The Commissioner did file a brief response to counsel’s motion (ECF No. 29), and did not alert the court to any issues in its role as trustee.

The court grants the motion for attorneys’ fees under 42 U.S.C. § 406(b).

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¹ This case was initially referred to the undersigned pursuant to E.D. Cal. L.R. 302(c)(15), and both parties voluntarily consented to proceed before a United States Magistrate Judge. (ECF Nos. 4, 5, 7.)

1 **BACKGROUND**

2 The facts and procedural history of this case were extensively outlined in the court’s
3 previous orders and need not be repeated here. (See ECF No. 20.) Briefly stated, on February 13,
4 2018, the court granted plaintiff’s motion for summary judgment in part, and remanded the matter
5 pursuant to sentence four of 42 U.S.C. § 405(g). (Id.) Following remand, on July 15, 2020, an
6 administrative law judge ultimately issued a fully favorable decision. (See ECF No. 26.)

7 Subsequently, on May 12, 2018, plaintiff’s counsel filed a motion for attorneys’ fees
8 under the Equal Access to Justice Act (“EAJA”). (ECF No. 22.) On June 29, 2018, the court
9 granted the request for fees and costs under the EAJA for \$5,504.98. (ECF No. 25.) Plaintiff was
10 also separately awarded \$6,000 in 42 U.S.C. 406(a) attorneys’ fees by the administrative law
11 judge. (ECF No. 26.) On August 13, 2020, plaintiff’s counsel filed the instant motion for
12 attorney’s fees under 42 U.S.C. § 406(b). (ECF No. 26.) Counsel served this motion on plaintiff.
13 (ECF No. 26.) The Commissioner filed a response. (ECF No. 28.)

14 **DISCUSSION**

15 Title 42 U.S.C. § 406(b) provides, in part, that:

16 Whenever a court renders a judgment favorable to a claimant under
17 this subchapter who was represented before the court by an attorney,
18 the court may determine and allow as part of its judgment a
19 reasonable fee for such representation, not in excess of 25 percent of
20 the total of the past-due benefits to which the claimant is entitled by
21 reason of such judgment, and the Commissioner of Social Security
22 may, notwithstanding the provisions of section 405(i) of this title, but
subject to subsection (d) of this section, 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. In case of any such judgment, no
other fee may be payable or certified for payment for such
representation except as provided in this paragraph.

23 42 U.S.C. § 406(b)(1)(A). Unlike fee-shifting provisions where the losing party is responsible for
24 attorneys’ fees, the attorneys’ fees provision in 42 U.S.C. § 406(b) is paid by the claimant out of
25 the past-due benefits awarded. Gisbrecht v. Barnhart, 535 U.S. 789, 802 (2002).

26 The Commissioner typically does not act as an adversary, but instead as an adviser to the
27 court with respect to fee requests under 42 U.S.C. § 406(b). Crawford v. Astrue, 586 F.3d 1142,
28 1144 n. 2 (9th Cir. 2009) (en banc) (“The Commissioner plays a part in the fee determination

1 resembling that of a trustee for the claimants.”). However, “[b]ecause the [Commissioner] has no
2 direct interest in how much of the award goes to counsel and how much to the disabled person,
3 the district court has an affirmative duty to assure that the reasonableness of the fee is
4 established.” Id. at 1149.

5 In Crawford, the Ninth Circuit Court of Appeals extensively discussed how the
6 reasonableness of the fee within the 25% cap is to be determined. The court noted that although
7 the Ninth Circuit had previously utilized the lodestar method to determine the reasonableness of
8 fees under 42 U.S.C. § 406(b), i.e., “by multiplying the reasonable hourly rate by the number of
9 hours reasonably expended on the case” with consideration of possible enhancements, the
10 approach changed after the United States Supreme Court’s decision in Gisbrecht. Crawford, 586
11 F.3d at 1148. The Ninth Circuit observed that:

12 In Gisbrecht, the Supreme Court flatly rejected our lodestar
13 approach. The court explained that we had “erroneously read §
14 406(b) to override customary attorney-client contingent-fee
15 agreements” when we approved the use of the lodestar to determine
16 a reasonable fee. 535 U.S. at 808-09. The Court held that a district
17 court charged with determining a reasonable fee award under
18 Section 406(b)(1)(A) must respect “the primacy of lawful attorney-
19 client fee agreements,” id. at 793, “looking first to the contingent-
20 fee agreement, then testing it for reasonableness,” id. at 808. The
21 Court noted that courts that had followed this model had
22 “appropriately reduced the attorney’s recovery based on the
23 character of the representation and the results the representative
24 achieved.” Id. A fee resulting from a contingent-fee agreement is
unreasonable, and thus subject to reduction by the court, if the
attorney provided substandard representation or engaged in dilatory
conduct in order to increase the accrued amount of past-due
benefits, or if the “benefits are large in comparison to the amount of
time counsel spent on the case.” Id. “[A]s an aid to the court’s
assessment of the reasonableness of the fee yielded by the fee
agreement,” but “not as a basis for satellite litigation,” the court
may require counsel to provide a record of the hours worked and
counsel’s regular hourly billing charge for noncontingent cases. Id.
The attorney bears the burden of establishing that the fee sought is
reasonable. Id. at 807.

25 Id. Thus, performance of the district court’s duty to assure reasonableness of the fee “must begin,
26 under Gisbrecht, with the fee agreement, and the question is whether the amount need be reduced,
27 not whether the lodestar amount should be enhanced.” Id. at 1149, 1151 (“the district court must
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1 first look to the fee agreement and then adjust downward if the attorney provided substandard
2 representation or delayed the case, or if the requested fee would result in a windfall”).

3 In support of his motion for attorneys’ fees under 42 U.S.C. § 406(b), plaintiff’s counsel
4 attached an attorney-client agreement, which provided for a contingent fee of 25% of any past
5 due benefits awarded in plaintiff’s case pursuant to 42 U.S.C. § 406(b). (ECF No. 27-1.) In light
6 of the guidance provided in Crawford, the court finds plaintiff’s counsel’s fee request to be
7 reasonable. As an initial matter, agreements providing for fees of 25% of past due benefits are
8 the “most common fee arrangement between attorneys and Social Security claimants.” Crawford,
9 586 F.3d at 1147. Additionally, the undersigned does not find any indication that plaintiff’s
10 counsel performed substandard work or unduly delayed the case; to the contrary, plaintiff’s
11 counsel’s work over several years ultimately resulted in a fully favorable decision for plaintiff
12 and an award of back benefits. Furthermore, the total amount sought (\$11,330) does not appear
13 to be disproportionate to the amount of time plaintiff’s counsel spent on the case. In his briefing,
14 plaintiff’s counsel suggests that he spent approximately 29.50 hours on the case, which equates to
15 a rate of approximately \$384 per hour (\$11,330 divided by 29.50 equals \$384). It is important to
16 note that plaintiff’s counsel also assumed the risk of receiving no compensation, as plaintiff’s
17 application was denied in full at the administrative level. (ECF No. 9-3 at 11.) The court finds
18 that the fee amount requested is reasonable in light of the several years of litigation and the result
19 achieved, and cannot be said to amount to a windfall to plaintiff’s counsel.

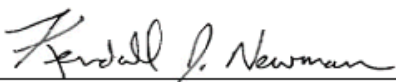
20 **ORDER**

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Plaintiff’s counsel’s motion for attorneys’ fees under 42 U.S.C. § 406(b) (ECF No. 26) is
23 GRANTED;
- 24 2. The Commissioner shall pay plaintiff’s counsel in this case the sum of \$11,330 in
25 attorneys’ fees under 42 U.S.C. § 406(b); and
- 26 3. Plaintiff’s counsel shall reimburse plaintiff \$5,504.98 in previously awarded EAJA fees.

27 Dated: October 15, 2020

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE