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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARMEN ANN MORROW,

Plaintiff,

v.

ANDREW SAUL, Commissioner of Social
Security,

Defendant.

No. 2:17-cv-0250 AC

ORDER

Plaintiff sought judicial review of a final decision of the Commissioner of Social Security (“Commissioner”), denying his application for a period of disability and disability insurance benefits (“DIB”) benefits under Title II and supplemental security income (SSI) under Title XVI of the Social Security Act (“the Act”). On October 31, 2017, the parties stipulated to remand, and an order and judgment was entered. ECF Nos. 22, 23.

Now pending before the court is plaintiff’s August 21, 2019 amended motion for an award of attorney’s fees pursuant to 42 U.S.C. § 406(b). ECF No. 28. On September 12, 2019, defendant filed a response taking “no position on the reasonableness of the request.” ECF No. 30 at 4. For the reasons set forth below, the motion will be granted.

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1 I. REASONABLENESS OF FEE REQUEST

2 At the outset of the representation, plaintiff and his counsel entered into a contingent-fee
3 agreement. ECF No. 29-1. Pursuant to that agreement plaintiff’s counsel now seeks attorney’s
4 fees in the amount of \$10,926.00, which represents 25% of the retroactive disability benefits
5 received by plaintiff on remand, for 10.25 hours of attorney time expended on this matter. ECF
6 Nos. 28-1, 28 at 4.

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 attorney,
11 the court may determine and allow as part of its judgment a
12 reasonable fee for such representation, not in excess of 25 percent of
13 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 Jesse S. Kaplan (“Kaplan Decl.”) (ECF No. 28 at 6-7). There is no
15 indication that a reduction of fees is warranted due to any substandard performance by counsel.
16 There is also no evidence that plaintiff’s counsel engaged in any dilatory conduct resulting in
17 excessive delay. The court finds that the \$10,962.00 fee, which represents 25% of the past-due
18 benefits paid to plaintiff, is not excessive in relation to the benefits awarded. In making this
19 determination, the court recognizes the contingent fee nature of this case and counsel’s
20 assumption of the risk of going uncompensated in agreeing to represent plaintiff on such terms.
21 See Crawford, 586 F.3d at 1152 (“[t]he attorneys assumed significant risk in accepting these
22 cases, including the risk that no benefits would be awarded or that there would be a long court or
23 administrative delay in resolving the cases”). Finally, counsel has submitted a detailed billing
24 statement in support of the requested fee. ECF No. 28 at 4. Defendant has not opposed the
25 reasonableness of the award.

26 Accordingly, for the reasons stated above, the court concludes that the fees sought by
27 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 \$2,017.10 in EAJA fees. See ECF No. 27. 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. 28), is GRANTED;
2. Counsel for plaintiff is awarded \$10,962.00 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; and
3. Counsel for plaintiff is directed to remit to plaintiff the amount of \$2,017.10 for EAJA fees previously paid to counsel by the Commissioner.

DATED: September 25, 2019



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE