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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MONIQUE ROBERTSON,
Plaintiff,
v.
ANDREW SAUL, Commissioner of Social
Security,
Defendant.

No. 2:18-cv-0143 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. By order filed July 10, 2019, plaintiff’s motion for summary judgment was granted, the decision of the Commissioner was reversed, and the case was remanded for the payment of benefits.¹ (ECF No. 24.)

On June 11, 2020, counsel for plaintiff filed a motion for an award of attorney’s fees pursuant to 42 U.S.C. § 406(b). (ECF No. 28.) At the outset of the representation, plaintiff and plaintiff’s counsel entered into a contingent-fee agreement. (ECF No. 28-3.) Pursuant to that agreement plaintiff’s counsel now seeks attorney’s fees in the amount of \$20,371.50, which represents 25% of the retroactive disability benefits received by plaintiff on remand. (ECF No.

¹ Both parties have previously consented to Magistrate Judge jurisdiction over this action pursuant to 28 U.S.C. § 636(c). (See ECF Nos. 8 & 9.)

1 28-1 at 2.) Defendant did not object to plaintiff's motion but instead offered "analysis of the
2 requested fees to assist this Court." (ECF No. 29 at 2.)

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

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

10 42 U.S.C. § 406(b)(1)(A). "In contrast to fees awarded under fee-shifting provisions such as 42
11 U.S.C. § 1988, the fee is paid by the claimant out of the past-due benefits awarded; the losing
12 party is not responsible for payment." Crawford v. Astrue, 586 F.3d 1142, 1147 (9th Cir. 2009)
13 (en banc) (citing Gisbrecht v. Barnhart, 535 U.S. 789, 802 (2002)). Although an attorney fee
14 award pursuant to 42 U.S.C. § 406(b) is not paid by the government, the Commissioner has
15 standing to challenge the award. Craig v. Sec'y Dep't of Health & Human Servs., 864 F.2d 324,
16 328 (4th Cir. 1989), abrogated on other grounds in Gisbrecht, 535 U.S. at 807. The goal of fee
17 awards under § 406(b) is to provide adequate incentive to attorneys for representing claimants
18 while ensuring that the usually meager disability benefits received are not greatly depleted.
19 Cotter v. Bowen, 879 F.2d 359, 365 (8th Cir. 1989).

20 The 25% statutory maximum fee is not an automatic entitlement, and the court must
21 ensure that the fee actually requested is reasonable. Gisbrecht, 535 U.S. at 808-09 ("[Section]
22 406(b) does not displace contingent-fee agreements within the statutory ceiling; instead, § 406(b)
23 instructs courts to review for reasonableness fees yielded by those agreements."). "Within the 25
24 percent boundary . . . the attorney for the successful claimant must show that the fee sought is
25 reasonable for the services rendered." Id. at 807. "[A] district court charged with determining a
26 reasonable fee award under § 406(b)(1)(A) must respect 'the primacy of lawful attorney-client fee
27 arrangements,' 'looking first to the contingent-fee agreement, then testing it for reasonableness.'" Crawford, 586 F.3d at 1149 (quoting Gisbrecht, 535 U.S. at 793 & 808).

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

10 Here, there is no indication that a reduction of fees is warranted due to any substandard
11 performance by counsel. Rather, plaintiff's counsel is an experienced attorney who secured a
12 successful result for plaintiff. There is also no evidence that plaintiff's counsel engaged in any
13 dilatory conduct resulting in excessive delay. The court finds that the \$20,371.50 fee, which
14 represents 25% of the past-due benefits paid to plaintiff, is not excessive in relation to the benefits
15 awarded. In making this determination, the court recognizes the contingent fee nature of this case
16 and counsel's assumption of the risk of going uncompensated in agreeing to represent plaintiff on
17 such terms. See Hearn v. Barnhart, 262 F. Supp.2d 1033, 1037 (N.D. Cal. 2003).

18 Accordingly, for the reasons stated above, the court concludes that the fees sought by
19 counsel pursuant to § 406(b) are reasonable. See generally Azevedo v. Commissioner of Social
20 Security, No. 1:11-cv-1341 AWI SAB, 2013 WL 6086666, at *2 (E.D. Cal. Nov. 19, 2013)
21 (granting petition pursuant to 406(b) for \$17,893.75 in attorney's fees); Coulter v. Commissioner
22 of Social Security, No. 1:10-cv-1937 AWI JLT, 2013 WL 5969674, at *2 (E.D. Cal. Nov. 8,
23 2013) (recommending award of \$15,084.23 in attorney's fees pursuant to 406(b)); Taylor v.
24 Astrue, No. 1:06-cv-00957-SMS, 2011 WL 836740, at *2 (E.D. Cal. Mar. 4, 2011) (granting
25 petition pursuant to 406(b) for \$20,960 in attorneys' fees); Jamieson v. Astrue, No. 1:09cv0490
26 LJO DLB, 2011 WL 587096, at *2 (E.D. Cal. Feb. 9, 2011) (recommending award of \$34,500 in
27 attorney fees pursuant to 406(b)).

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1 An award of § 406(b) fees is, however, normally offset by any prior award of attorney's
2 fees granted under the Equal Access to Justice Act ("EAJA"). 28 U.S.C. § 2412; Gisbrecht, 535
3 U.S. at 796. Here, plaintiff's counsel was previously awarded \$6,541.92 in EAJA fees and the
4 award under § 406(b) must be offset by that amount. (ECF No. 27.)

5 Accordingly, IT IS HEREBY ORDERED that:

6 1. Plaintiff's June 11, 2020 motion for attorney fees under 42 U.S.C. § 406(b), (ECF No.
7 28), is granted;

8 2. Counsel for plaintiff is awarded \$20,371.50 in attorney fees under § 406(b). The
9 Commissioner is directed to pay the fee forthwith and remit to plaintiff the remainder any
10 withheld benefits; and

11 3. Upon receipt of the \$20,371.50 in attorney fees pursuant to § 406(b), counsel shall
12 reimburse plaintiff in the amount of \$6,541.92 previously paid by the government under the
13 EAJA.

14 Dated: October 12, 2020

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18 DEBORAH BARNES
19 UNITED STATES MAGISTRATE JUDGE
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