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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TARILYN TRACY ELLIOTT,
Plaintiff,
v.
MARTIN O’MALLEY, Commissioner of
Social Security,
Defendant.

Case No. 2:21-cv-1202-JDP

ORDER

Plaintiff’s counsel seeks an award of attorney fees under 42 U.S.C. § 406(b).¹ ECF No. 22. Plaintiff entered into a contingent fee agreement providing that she would pay counsel twenty-five percent of any award of past-due benefits. ECF No. 22-3 at 1. After this court remanded for further proceedings, plaintiff was found disabled and awarded \$113,713.70 past-due benefits. ECF No.22-1 at 3. Plaintiff’s counsel’s request \$21,200.00 in attorney fees, which is less than the statutory maximum, and which would work out to an effective hourly rate of \$550.64.

An attorney is entitled to reasonable fees for successfully representing social security claimants in district court.

¹ Although the motion for fees was filed under plaintiff’s name, plaintiff’s counsel is the 21cvreal party in interest. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 798 n.6 (2002).

1 Whenever a court renders a judgment favorable to a claimant under
2 this subchapter who was represented before the court by an
3 attorney, the court may determine and allow as part of its judgment
4 a reasonable fee for such representation, not in excess of 25 percent
5 of the total of the past-due benefits to which the claimant is entitled
6 by reason of such judgment.

7 42 U.S.C. § 406(b)(1)(A). Rather than being paid by the government, fees under section 406(b)
8 are paid by the claimant from the awarded past-due benefits. *Crawford v. Astrue*, 586 F.3d 1142,
9 1147 (9th Cir. 2009) (en banc) (citing *Gisbrecht*, 535 U.S. at 802). The twenty-five percent
10 statutory maximum fee is not an automatic entitlement; the court must ensure that the requested
11 fee is reasonable. *Gisbrecht*, 535 U.S. at 808-09 (“We hold that § 406(b) does not displace
12 contingent-fee agreements within the statutory ceiling; instead, § 406(b) instructs courts to review
13 for reasonableness fees yielded by those agreements.”). In assessing whether a fee is reasonable,
14 the court should consider “the character of the representation and the results the representative
15 achieved.” *Id.* at 808. A “court may properly reduce the fee for substandard performance, delay,
16 or benefits that are not in proportion to the time spent on the case.” *Crawford*, 586 F.3d at 1151.

17 The court finds that the requested fees are reasonable. Counsel’s billing records reflect a
18 total of 38.5 hours of attorney time on this case. ECF No. 22-4 at 1. Counsel’s request for
19 \$21,200.00, which is the equivalent to less than the statutory maximum, would constitute an
20 hourly rate of approximately \$550.64 for attorney services. Counsel did not engage in dilatory
21 conduct or perform in a substandard manner. Indeed, counsel’s representation resulted in this
22 matter being remanded for further proceedings, which resulted in a favorable decision and an
23 award of benefits. *See* ECF Nos. 18 & 22. Given counsel’s experience, the result obtained in this
24 case, and the risk of loss in representing plaintiff, the court finds the hourly rate reasonable. *See,*
25 *e.g., De Vivo v. Berryhill*, 2018 WL 4262007 (E.D. Cal. Sept. 6, 2018) (awarding fees at effective
26 hourly range of \$1,116.26); *Jamieson v. Astrue*, 2011 WL 587096 (E.D. Cal. Feb. 9, 2011)
27 (finding fees at effective hourly rate of \$1,169.49 reasonable); 2016 WL 4248557 (S.D. Cal. Aug.
28 11, 2016) (awarding fees at effective hourly rate of \$1,063); *Palos v. Colvin*, 2016 WL 5110243
(C.D. Cal. Sept. 20, 2016)) (finding fees at effective hourly rate of \$1,546.39 reasonable).


1 Counsel concedes that the \$8,293.66 award should be offset by the fees previously
2 awarded under the under the Equal Access to Justice Act (“EAJA”). ECF No. 22 at 5; *see* ECF
3 No. 21. He also indicates that he will reimburse plaintiff the amount previously awarded under
4 the EAJA. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (holding that where attorney’s
5 fees are awarded under both EAJA and § 406(b), the attorney must refund the smaller of the two
6 awards to the plaintiff).

7 Accordingly, it is hereby ORDERED that:

- 8 1. The motion for attorney fees, ECF No. 22, is granted.
- 9 2. Plaintiff’s counsel is awarded \$21,200.00 in fees pursuant to 42 U.S.C. § 406(b).
- 10 3. Upon receipt of the \$21,200.00 award, counsel shall refund to plaintiff the sum of
11 \$8,293.66 previously awarded under the EAJA.

12 IT IS SO ORDERED.

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14 Dated: November 21, 2024

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16 JEREMY D. PETERSON
17 UNITED STATES MAGISTRATE JUDGE
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