

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

COLLEEN M. GOODBAR,  
Plaintiff,  
v.  
CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,  
Defendant.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Case No. [11-cv-04572-SI](#)

**ORDER GRANTING MOTION FOR  
ATTORNEY'S FEES**

Re: Dkt. No. 22

Now before the Court is plaintiff's motion for attorney's fees pursuant to 42 U.S.C. § 406(b). Dkt. No. 22. The government does not assent nor object to the fee request. Dkt. No. 23 at 2.

Attorney Steven G. Rosales represented plaintiff before this Court on appeal of her application for Disability Insurance Benefits under Title II of the Social Security Act. By Order dated November 26, 2012, this Court granted plaintiff's motion for summary judgment, denied defendant's motion for summary judgment, and remanded for further proceedings to the Social Security Administration. Dkt. No. 17. On February 5, 2013, pursuant to stipulation, this Court approved an award of \$3,500.00 in attorney's fees, costs, and expenses to plaintiff under the Equal Access to Justice Act ("EAJA"). Dkt. No. 21. On September 26, 2014, the Administrative Law Judge ruled in plaintiff's favor and awarded plaintiff past-due benefits totaling \$62,694.00. Dkt. Nos. 22-2 at 1, 22-3 at 6. The Social Security Administration withheld \$15,673.50 of the award, equal to twenty-five percent of the past-due benefits, in the event plaintiff's counsel were to petition for attorney's fees. Dkt. No. 22-3 at 6. Plaintiff's counsel now seeks an award under 42 U.S.C. § 406(b), of \$15,673.50 in attorney's fees. Dkt. No. 22.

Section 406(b) provides that when a plaintiff prevails on a judgment, the Court may allow

1 a reasonable fee for plaintiff's counsel, which can be no more than twenty-five percent of the total  
2 past-due benefits awarded to plaintiff. 42 U.S.C. § 406(b)(1)(A). The court must review  
3 counsel's request for fees "as an independent check" to assure that the contingency fee agreement  
4 will "yield reasonable results in particular cases." *See Gisbrecht v. Barnhart*, 535 U.S. 789, 807  
5 (2002). The court should consider the character of the representation and the results achieved in  
6 making its determination. *Id.* at 808. An award of Section 406(b) fees is offset by any award of  
7 attorney's fees granted under the EAJA: "the claimant's attorney must refun[d] to the claimant the  
8 amount of the smaller fee." 28 U.S.C. § 2412; *Gisbrecht*, 535 U.S. at 796 (internal quotation  
9 marks and citation omitted).

10 In this case, the retainer agreement entitles plaintiff's counsel to a maximum of twenty-five  
11 percent of the past-due benefits for successful work performed. Dkt. No. 22-1. In support of the  
12 motion, plaintiff's counsel has submitted a declaration describing time spent on the case, setting  
13 forth counsel's experience, and attaching the retainer agreement. *See* Rosales Decl. ¶¶ 2, 5, 7.  
14 The fee award would require plaintiff's counsel pay back to plaintiff the \$3,500.00 already  
15 awarded to counsel under the EAJA. *See Gisbrecht*, 535 at 796; Rosales Decl. ¶ 6.

16 The Court finds that the amount of fees sought is reasonable. As an initial matter, the  
17 Court finds that the fee agreement is within the statutory ceiling set by Section 406(b). The fee  
18 agreement between plaintiff and her counsel provides that if plaintiff received a favorable  
19 decision, plaintiff would pay counsel a fee no greater than twenty-five percent of her past-due  
20 benefits. Rosales Decl., Ex. 1. The Court further finds that plaintiff's counsel achieved positive  
21 results in the case; plaintiff's counsel succeeded in having this matter remanded back to the Social  
22 Security Administration, which then awarded plaintiff past-due as well as ongoing benefits.  
23 Plaintiff's counsel and his legal staff spent 20.3 hours on the matter, for an effective hourly rate of  
24 \$772.09. *See* Rosales Decl. ¶ 5. An hourly rate of \$772.09 for an attorney who has been  
25 practicing in matters of Social Security law since 2002 is not unreasonable. *See e.g.* *Villa v.*  
26 *Astrue*, No. CIV-S-06S0846, 2010 WL 118454, at \*1 (E.D. Cal. Jan. 7, 2010); *see also* Rosales  
27 Decl. ¶ 7. After review of the record, the Court finds that the requested attorney's fees are  
28 reasonable and do not constitute a windfall. *See Gisbrecht*, 535 U.S. 789.

1

2 **CONCLUSION**

3 For the foregoing reasons, the Court hereby GRANTS plaintiff's motion for attorney's fees  
4 and awards fees in the amount of \$15,673.50 pursuant to 42 U.S.C. § 406(b). The Court further  
5 ORDERS plaintiff's counsel to reimburse plaintiff the \$3,500.00 previously awarded pursuant to  
6 the Equal Access to Justice Act. The Commissioner shall pay the attorney's fees to plaintiff's  
7 counsel out of the withheld amount within 30 days of the date of this order.

8

9

**IT IS SO ORDERED.**

10

11

Dated: November 2, 2015

*Susan Illston*

12  
13 SUSAN ILLSTON  
14 United States District Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28