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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLAYTON WOOD,
Plaintiff,
v.
NANCY A. BERRYHILL,
Defendant.

Case No.14-cv-03764-JSC

ORDER RE: PLAINTIFF’S MOTION FOR FEES

Re: Dkt. No. 29

United States District Court
Northern District of California

In this Social Security case, Plaintiff Clayton Wood moves for attorneys’ fees pursuant to 42 U.S.C. § 406(b). (Dkt. No. 27.) Defendant Nancy A. Berryhill, the Commissioner of the Social Security Administration (“SSA”), submitted a response analyzing the fee request which does not take a position as to the reasonableness of the fee request. After carefully considering the arguments and briefing submitted, the Court concludes that oral argument is unnecessary, see Civ. L.R. 7-1(b), and denies the motion without prejudice.

BACKGROUND

This case stems from Plaintiff’s appeal of the SSA’s denial of his application for disability benefits for a combination of physical and mental impairments, including: post traumatic stress disorder, head injury, head pain, depression, ringing in the inner ear, blurred eye vision, and short term memory loss. On August 14, 2015, the Court granted Plaintiff’s motion for summary judgment, denied Defendant’s cross motion for summary judgment, and remanded to the SSA for further proceedings, concluding that the Administrative Law Judge (“ALJ”) committed legal error in weighing the medical evidence and evaluating Plaintiff’s credibility. (Dkt. No. 19.) On remand, the ALJ determined that Plaintiff was, and continues to be, disabled as of November

1 2011. (Dkt. No. 29-1 at 1.¹) As a result, the SSA awarded Plaintiff past-due benefits, in the
2 amount of \$53,881.50 for himself and \$19,476 for his minor daughter, as well as ongoing benefits.
3 (Id.) On December 28, 2015, pursuant to the parties' stipulation, the Court awarded \$4,303.92 in
4 fees to Plaintiff's counsel pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C.
5 § 2412(d). (Dkt. No. 27.) Plaintiff subsequently filed a motion for fees pursuant to 42 U.S.C. §
6 406(b). (Dkt. No. 29.) Counsel requests fees in the amount of \$15,339.00; this total represents
7 25% of Plaintiff's and his daughter's past-due benefits. (Dkt. No. 27 at 8.)

8 DISCUSSION

9 Section 406(b) provides that "[w]hen a court renders a judgment favorable to a [social
10 security] claimant under this subchapter who was represented before the court by an attorney, the
11 court may determine and allow as part of its judgment a reasonable fee" to claimant's attorney;
12 such a fee can be no more than 25% of the total of past-due benefits awarded to the claimant. 42
13 U.S.C. § 406(b)(1)(A). A court may award such a fee even if the court's judgment did not
14 immediately result in an award of past-due benefits; where the court has rendered a judgment
15 favorable to a claimant by reversing an earlier determination by an ALJ and remanding for further
16 consideration, the court may calculate the 25% fee based upon any past-due benefits awarded on
17 remand. See, e.g., Crawford v. Astrue, 586 F.3d 1142 (9th Cir.2009) (en banc); Wells v. Colvin,
18 No. 12-CV-05287-JST, 2015 WL 4072847, at *1 (N.D. Cal. July 2, 2015).

19 Under Section 406(b), a court must serve "as an independent check" of contingency fee
20 agreements "to assure that they yield reasonable results." *Gisbrecht v. Barnhart*, 535 U.S. 789,
21 807 (2002). Section 406(b) "does not displace contingent-fee agreements within the statutory
22 ceiling; instead, [Section] 406(b) instructs courts to review for reasonableness fees yielded by
23 those agreements." *Id.* at 808-09. The court's review of a fee agreement is based on the character
24 of the representation and the results achieved, see *Gisbrecht*, 535 U.S. at 808, and can include
25 analyzing: whether counsel provided substandard representation, any dilatory conduct by counsel
26 to accumulate additional fees, whether the requested fees are excessively large in relation to the

27

28 ¹ Record citations are to material in the Electronic Case File ("ECF"); pinpoint citations are to the
ECF-generated page numbers at the top of the documents.

1 benefits achieved, and the risk counsel assumed by accepting the case. See Crawford, 586 F.3d at
2 1151-52; Wells, 2015 WL 4072847 at *1.

3 Plaintiff's counsel has provided insufficient information for the Court to analyze the
4 reasonableness of his fee request. First, counsel bases his fee request in part on the contingency
5 fee agreement that he had with Plaintiff which provides in part that he shall receive 25 percent of
6 any award of past-due benefits. (Dkt. No. 29-3 at 1.) However, this agreement was signed by Mr.
7 Wood June 15, 2015 and "approved by the law firm" August 2, 2015—which is four months after
8 the motion for summary judgment was fully briefed and while that motion was under
9 submission—that is, after all the substantive work had been performed in this case. (Dkt. No. 29-
10 3 at 3.) To the extent that there is another retainer agreement, which would govern the time period
11 relevant to the Court's order granting Plaintiff's motion for summary judgment, counsel may re-
12 file his motion for attorney's fees attaching the applicable retainer agreement.² Second, counsel
13 has failed to submit any evidence or documentation supporting his request for \$15,339 in fees.
14 Notably, he has not submitted a declaration attesting to his hourly rate, detailing the hours
15 expended on this matter, or otherwise explaining the reasonableness of his request for \$15,399.
16 Finally, as the Commissioner notes, the docket does not reflect that counsel served a copy of his
17 motion for fees on Plaintiff.

18 Accordingly, Plaintiff's counsel's motion for attorney's fees is DENIED without prejudice
19 to renewal provided he addresses the issues raised herein. Should counsel do so, he must serve a
20 copy of the motion on Plaintiff and file proof of service of the same.

21 This Order disposes of Docket No. 29.

22 **IT IS SO ORDERED.**

23 Dated: July 11, 2017

24 
25 JACQUELINE SCOTT CORLEY
26 United States Magistrate Judge

27 ² Further, Plaintiff's Notice of Change in Benefits letter which was attached to counsel's motion
28 states in part that "Under the fee agreement, the representative cannot charge more than
\$6000.00 for his or her work." (Dkt. No. 29-1 at 2.) Counsel shall explain what fee agreement
this statement refers to in any renewed fee motion.