

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PETER J. PINEDO,)	Case No.: 05-CV-01421-PSG
)	
Plaintiff,)	ORDER GRANTING COUNSEL'S
)	UNOPPOSED MOTION FOR AN
v.)	AWARD OF ATTORNEYS' FEES
)	PURSUANT TO 42 U.S.C. § 406(b)
MICHAEL J. ASTRUE, COMMISSIONER OF)	
SOCIAL SECURITY,)	(Re: Docket No. 22)
)	
Defendant.)	
)	

In this social security appeal, attorney Thomas Beltran (“Beltran”), counsel for Plaintiff Peter J. Pinedo (“Pinedo”), moves for an award of attorneys’ fees pursuant to 42 U.S.C. § 406(b) in the amount of \$9,288.95. Neither Pinedo nor the Government oppose the award. Pursuant to Civ. L.R. 7-1(b), the motion was taken under submission without oral argument and the hearing vacated. Having reviewed the papers and considered the arguments of counsel, the court GRANTS Beltran’s motion for an award of attorney’s fees.

Beltran represented Pinedo during his appeal for childhood disability benefits. Pursuant to an oral agreement with Pinedo’s sister, Frances Joan Spiller (“Spiller”), Beltran deposited \$9,000.00 that he received from Spiller into an escrow account. Beltran and Spiller agreed that any

1 disbursement from the account required approval from some competent authority. Otherwise, the
2 parties did not enter into any specific or written fee agreement.

3 Following remand by the district court, the administrative law judge awarded Pinedo
4 \$58,778.00 in retroactive benefits. On January 27, 2011, the administrative law judge granted
5 Beltran’s fee petition in the amount of \$4,419.00 for representing Pinedo in proceedings before the
6 Social Security Administration (“SSA”). The administrative law judge, however, declined to award
7 attorney’s fees related to Beltran’s representation of Pinedo in district court because he lacked the
8 authority to do so. SSA has withheld \$14,694.95 or 25 percent of the past-due benefits awarded to
9 Pinedo for attorney’s fees. Beltran now moves for an award of attorney’s fees totaling \$9,288.95,
10 an amount totaling less than 25 percent of past-due benefits.

11 In *Gisbrecht v. Barnhart*, the Supreme Court held that attorney’s fees may be awarded
12 under 42 U.S.C. §406(b).¹ The court acts as an independent check on contingent-fee agreements so
13 that reasonable results are achieved.² The relevant portion of the code section states:

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15 Whenever a court renders a judgment favorable to a claimant under this subchapter who
16 was represented before the court by an attorney, the court may determine and allow as part
17 of its judgment a reasonable fee for such representation, not in excess of 25 percent of the
18 total of the past-due benefits to which the claimant is entitled by reason of such judgment,
19 and the Commissioner of Social Security may, notwithstanding the provisions of section
20 405(i) of this title, but subject to subsection (d) of this section, certify the amount of such
21 fee for payment to such attorney out of, and not in addition to, the amount of such past-due
22 benefits.³

23 The court finds that the attorney’s fees requested by Beltran are reasonable in light of the total past-
24 due benefits awarded and the documentation provided in support of counsel’s motion. First, while
25 Beltran, Pinedo or Spiller did not enter into a specific or written fee agreement, Beltran seeks

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¹ 535 U.S. 789, 796, 122 S.Ct. 1817, 152 L.Ed.2d 996 (2002) (“Fee awards may be made under both [42 U.S.C. 406(b) and under the Equal Access to Justice Act], but the claimant’s attorney must refund to the claimant the amount of the smaller fee, up to the point the claimant receives 100 percent of the past-due benefits.”).

² *Id.* at 807.

³ 42 U.S.C. § 406(b)(1)(A).

1 attorney's fees that are less than 25 percent of the total past-due benefits awarded to Pinedo. This
2 amount is below the ceiling set by § 406(b). Beltran notes that he worked 37.50 hours on the case
3 and that his hourly rate is \$250.⁴ Second, the factors identified in *Gisbrecht* to warrant a reduction
4 of requested fees are reflected in the requested fee amount. Attorney's fees awarded under 42
5 U.S.C. § 406(b)(1)(A) may be reduced from the amount authorized by a contingency fee agreement
6 "based on the character of the representation and the results the representative achieved."⁵ This
7 includes a consideration of whether counsel's performance was substandard, whether there was
8 excessive delay by counsel which resulted in an undue accumulation of past-due benefits, and
9 whether the requested fees are excessively large in relation to the benefits achieved.⁶ Here, there is
10 no indication that Beltran's performance was substandard or that there was any undue delay so that
11 past-due benefits could accumulate. Moreover, Beltran reduced his requested fees to less than 25
12 percent of the total of the past-due benefits. Having reviewed the papers and considered the
13 \$4,419.00 administrative fee awarded by the administrative law judge, the court finds that the
14 requested \$9,288.95 fee amount is both reasonable under *Gisbrecht* and below the 25 percent
15 statutory cap.

16 **IT IS SO ORDERED.**

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18 Dated: 3/2/2012



PAUL S. GREWAL
United States Magistrate Judge

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25 ⁴ Under the lodestar method generally used in fee-shifting jurisprudence, Beltran would seek
26 attorney's fees totaling \$9,375. The amount sought is determined by multiplying the hours worked
on a client's matter and the attorney's hourly rate.

27 ⁵ *Id* at 808.

28 ⁶ *See Crawford v. Astrue*, 586 F.3d 1142, 1151-52 (9th Cir. 2009).