

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

SYLVIA ARDLEY,

Plaintiff,

v.

CASE NO. 1:09cv185-MP-GRJ

MICHAEL J. ASTRUE,

Defendant.

_____ /

ORDER

This matter is before the court on plaintiff's counsel's motion for attorney fees pursuant to 42 U.S.C. § 406(b)(1). (Doc. 40). The court has previously granted two separate motions for attorney fees, pursuant to 42 U.S.C. § 406(b)(1). Plaintiff's counsel now moves the court for an additional \$3,743.50 in attorney fees (equal to 25 percent of plaintiff's youngest child's \$14,974.00 in past due benefits).

The Commissioner has filed a response (doc. 41) indicating that he does not contest a fee of 25 percent of plaintiff's child's past due benefits. Although the attorney award of \$3,743.50 is uncontested, the court must still make an independent determination of the reasonableness of any fee awarded pursuant to § 406(b). See *Gisbrecht v. Barnhart*, 535 U.S. 789, 807-08, 122 S. Ct. 1817, 1828 (2002) (holding that courts may award a reasonable fee not to exceed twenty-five percent of pastdue benefits and should consider the character of the representation and the results the representation achieved in determining the reasonableness of a contingency fee agreement). The court finds upon consideration of the factors cited with approval in *Gisbrecht* that the requested fee award is reasonable. The representation of plaintiff in this case was not substandard, and the attorney for plaintiff, does not appear to have been responsible for any delays in this matter. Moreover, counsel represented plaintiff on a contingency fee basis for an extended period of time, obtaining additional past-due benefits in the amount of \$14,974.00. While

the hourly rate almost certainly exceeds market rates, by working on a contingency fee basis counsel accepted the risk of not being compensated for his efforts. As such, the requested fee is not a windfall. Furthermore, the plaintiff has made no objection to his attorney's fee request. The Commissioner withheld \$3,743.50 of plaintiff's child's past-due benefits for attorney fees. Pursuant to the fee agreements in this case, plaintiff's counsel seeks this amount in attorney fees.

Accordingly, the motion for attorneys' fees (doc. 40) is GRANTED. Pursuant to 42 U.S.C. § 406(b), plaintiff's attorney is awarded fees in the amount of \$3,743.50. Defendant is ordered to pay the fee from plaintiff's past-due benefits being held by defendant.

DONE AND ORDERED this 12th day of September, 2012.

s/ M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE