

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

JEREMY R. RISNER,

Plaintiff,

v.

MARTIN J. O'MALLEY, Commissioner of
the Social Security Administration,

Defendant.

CAUSE NO.: 3:20-CV-935-TLS

OPINION AND ORDER

This matter is before the Court on an Unopposed Supplemental Petition for Attorney Fee Pursuant to § 206(b)(1) [ECF No. 30], filed on March 1, 2024. For the reasons stated below, the motion is GRANTED.

BACKGROUND

On February 11, 2016, the Plaintiff filed an application for disability insurance benefits, alleging disability beginning on January 15, 2016. AR 277, ECF No. 16. After the Administrative Law Judge issued an unfavorable decision, the Plaintiff filed a Complaint in federal court, and the Court reversed and remanded the case for further proceedings. ECF No. 24. On December 10, 2021, the Court awarded the Plaintiff's attorney Equal Access to Justice Act (EAJA) fees in the amount of \$5,500.00. ECF No. 27. Ultimately, the Social Security Administration awarded the Plaintiff past-due benefits, twenty-five percent of which was \$29,141.20. *See* Notice of Award 3, ECF No. 28-1. On November 16, 2023, the Court granted the Plaintiff's attorney's motion for an award of attorney fees under 42 U.S.C. § 406(b) in the amount of \$29,141.20. ECF No. 29. In the instant motion, the Plaintiff's attorney seeks an additional \$15,776.25 in attorney fees under § 406(b) based on the award of past due benefits to

the Plaintiff's two auxiliaries. Counsel represents that the EAJA fee was confiscated to pay the Plaintiff's debt to the Government, so no EAJA refund is due. ECF No. 30, p. 2.

ANALYSIS

The Plaintiff's counsel requests \$15,776.25 in attorney's fees pursuant to 42 U.S.C § 406(b). The Social Security Act allows for a reasonable fee to be awarded both for representation at the administrative level, *see* 42 U.S.C. § 406(a), as well as representation before the Court, *see* 42 U.S.C § 406(b). *Culbertson v. Berryhill*, 139 S. Ct. 517, 520 (2019) (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002)). Under § 406(b), the Court may award a reasonable fee to the attorney who has successfully represented the claimant in federal court, not to exceed twenty-five percent of the past-due benefits to which the social security claimant is entitled. 42 U.S.C. § 406(b)(1)(A); *Gisbrecht*, 535 U.S. at 792. The reasonableness analysis considers the "character of the representation and the results the representative achieved." *Gisbrecht*, 535 U.S. at 808. Reasons to reduce an award include an attorney's unjustifiable delay or if the past-due benefits are large in comparison to the amount of time an attorney has spent on a case. *Id.*

In this case, the requested amount in attorney's fees is consistent with the contingency agreement as the agreement calls for payment of 25% of any past-due benefits awarded following court remand, including auxiliaries who are eligible for benefits on the Plaintiff's record due to work performed by counsel. *See* Retainer and Fee Agreement, ECF No. 30-2. Counsel represents that 28.15 attorney hours were spent in federal court on this case, resulting in an effective hourly rate of \$1,595.65 based on the total attorney fee award of \$44,917.45. *See* Pl. Mot. 2, 4. This hourly rate is reasonable given the contingent nature of this case, the favorable past-due benefit award, and the benefit the Plaintiff and auxiliary will receive in future payments. *See Long v. Saul*, No. 3:19-CV-155, 2021 WL 2588110, at *1 (N.D. Ind. June 24, 2021) (noting

that an hourly rate of \$1,711.96 is within the range of rates approved by courts); *McPeters v. Saul*, No. 4:17-CV-41, 2020 WL 2507935, at *2 (N.D. Ind. May 15, 2020) (finding that an hourly rate of \$1,522.14 was reasonable); *Koester v. Astrue*, 482 F. Supp. 2d 1078, 1083 (E.D. Wis. 2007) (collecting cases showing that district courts have awarded attorney's fees with hourly rates ranging from \$400 to \$1,500).

CONCLUSION

For the reasons stated above, the Court hereby GRANTS the Unopposed Supplemental Petition for Attorney Fee Pursuant to § 206(b)(1) [ECF No. 30] and AWARDS attorney fees under 42 U.S.C. § 406(b) in the amount of \$15,776.25.

SO ORDERED on April 1, 2024.

s/ Theresa L. Springmann
JUDGE THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT