

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE**

PAMELA RAE HARTMAN,

Plaintiff,

v.

ANDREW M. SAUL, Commissioner of the
Social Security Administration,

Defendant.

CAUSE NO.: 4:19-CV-26-TLS

OPINION AND ORDER

This matter is before the Court on the Plaintiff's Unopposed Motion for Approval of Attorney Fees Pursuant to 42 U.S.C.A. Section 406(b) [ECF No. 27], filed on April 19, 2021. For the reasons stated below, the Plaintiff's Motion is GRANTED.

BACKGROUND

On April 1, 2015, the Plaintiff filed an application for disability insurance benefits, alleging disability beginning on July 7, 2014. June 10, 2020 Op. & Order 1, ECF No. 18. After the Administrative Law Judge issued an unfavorable decision, the Plaintiff filed a Complaint in this Court on March 15, 2019 [ECF No. 1]. On June 10, 2020, the Court reversed and remanded this case for further proceedings. June 10, 2020 Op. & Order. Ultimately, the Social Security Administration issued a Notice of Award [ECF No. 27-1] awarding the Plaintiff past-due benefits, twenty-five percent of which was withheld for the payment of attorney fees in the amount of \$32,515.63. *See* Notice of Award 4, ECF No. 27-1.

A different attorney representing the Plaintiff at the administrative level has requested attorney fees from the Administration in the amount of \$10,000.00 under 42 U.S.C. § 406(a),

which would be paid from the twenty-five percent withheld. In the instant motion, the Plaintiff's attorney requests an award of attorney fees under 42 U.S.C. § 406(b) in the remaining amount of \$22,515.63. Pl.'s Mot. 1, ECF No. 27. In the retainer agreement between the Plaintiff and her attorney, the Plaintiff agreed to pay her attorney twenty-five percent of all past-due benefits. *See Retainer and Fee Agreement for Federal Court Representation*, ECF No. 27-2. Counsel was previously awarded \$7,500.00 in attorney fees pursuant to the Equal Access to Justice Act (EAJA), which counsel will refund to the Plaintiff if fees are awarded under § 406(b). *See Pl.'s Mot.* ¶ 6, ECF No. 27; *see also* Sept. 22, 2020 Order, ECF No. 26.

ANALYSIS

The Plaintiff's counsel, subject to refunding \$7,500 in EAJA fees, requests \$22,515.63 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.* 808. In addition, an award of EAJA fees under 28 U.S.C. § 2412 offsets an award under § 406(b). *Id.* at 796.

In this case, the requested amount in attorney's fees is consistent with the contingency agreement. In addition, counsel has requested only \$22,515.63 in attorney fees under § 406(b), which is less than the twenty-five percent permitted by the agreement, so that the § 406(b) fee in combination with the \$10,000.00 § 406(a) fee requested by counsel at the administrative level will not exceed the twenty-five percent withheld in the amount of \$32,515.63. Pl.'s Mot. ¶ 5. The Plaintiff's counsel represents that 36.8 attorney hours were spent in federal court on this case, resulting in an effective hourly rate of \$611.84. *See id.* at ¶ 9. Such an hourly rate is reasonable given the contingent nature of this case. *See Osmun v. Comm'r of Soc. Sec.*, 1:16-CV-273, 2020 WL 7334271, *3 (N.D. Ind. Dec. 14, 2020) (effective hourly rate of \$525); *Niebuhr v. Saul*, 18-CV-720, 2020 WL 6484488, at *1 (W.D. Wis. Nov. 4, 2020) (effective hourly rate of \$579); *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 GRANTS the Plaintiff's Unopposed Motion for Approval of Attorney Fees Pursuant to 42 U.S.C.A. Section 406(b) [ECF No. 27] and AWARDS attorney's fees under 42 U.S.C. § 406(b) in the amount of \$22,525.63. The Court ORDERS the Plaintiff's attorney to refund to the Plaintiff the \$7,500.00 in EAJA fees previously awarded in this case.

SO ORDERED on April 27, 2021.

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