

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION
CIVIL ACTION NO. 1:17-CV-00113-LLK

ALLEN D. CHUMBLEY

PLAINTIFF

v.

ANDREW SAUL, Commissioner of Social Security

DEFENDANT

MEMORANDUM OPINION AND ORDER

This matter is before the Court on the motion of Plaintiff's counsel, M. Gail Wilson, for attorney fees pursuant to 42 U.S.C. § 406(b) in the amount of \$7,565. [DN 26.] The Commissioner does not oppose the motion. [DN 27.] The parties consented to the jurisdiction of the undersigned Magistrate Judge to determine this case, with any appeal lying before the Sixth Circuit Court of Appeals. [DN 11.]

For the reasons below, the Court will GRANT counsel's motion [DN 26] and will AWARD counsel a fee in the amount of \$7,565.

Procedural History

The Court remanded this matter to the Commissioner for further administrative proceedings and awarded Plaintiff (and, by assignment, counsel) benefits under the Equal Access to Justice Act (EAJA) in the amount of \$2,675 (21.4 hours x \$125 per hour). [DN 22, 24.] On remand, the Commissioner awarded Plaintiff disability benefits and auxiliary benefits in the amount of \$64,960. [DN 26-1 at 2.] The Commissioner is presently withholding \$16,250 (25% of \$64,960) of past-due benefits for payment of attorney fees. [*Id.*]

Discussion

For analytic purposes, the Court treats counsel's \$7,565 fee request as a request for \$10,240. This is because counsel apparently intends to keep the previously-awarded EAJA fee (and forego the technically-correct procedure of refunding Plaintiff the \$2,675 EAJA fee). ($\$7,565 + \$2,675 = \$10,240$.)

The Sixth Circuit described the applicable analytic framework in *Lasley v. Comm’r of Soc. Sec.*, 771 F.3d 308 (6th Cir. 2014). *Lasley’s* counsel sought a Section 406(b) fee in the amount of \$26,049.73 (the full 25 percent of withheld benefits based on 35.5 hours of court work). *Id.* at 308. The Commissioner argued that awarding counsel that much would constitute a “windfall” to counsel. *Id.* at 309. The district court agreed with the Commissioner, reduced the fee to \$12,780, the amount proposed by the Commissioner (35.5 hours x \$360 per hour), and the Sixth Circuit affirmed. *Id.* The Sixth Circuit held that \$360 per hour was “per se reasonable” because it was not more than “twice the standard rate” of \$180 per hour, applicable to Section 406(b) fee requests in the Southern District of Ohio. *Id.* (quoting *Hayes v. Sec’y of Health & Human Servs.*, 923 F.2d 418, 422 (6th Cir. 1991)).

Magistrate Judge Brennenstuhl recently conducted a survey of relevant caselaw and determined that the standard rate in the Western District of Kentucky is \$140 per hour. *Carter v. Comm’r*, No. 4:15-CV-00058-HBB, 2019 WL 4169895, at *6 (W.D. Ky. Sept. 3, 2019). In this case, therefore, a fee of \$5,992 (21.4 hours x \$280 per hour) would be per se reasonable.

However, a “hypothetical hourly rate that is equal to or greater than twice the standard rate may [also] well be reasonable.” *Lasley v. Comm’r*, 771 F.3d 308, 309 (6th Cir. 2014) (quoting *Hayes*, 923 F.2d at 422). The Commissioner suggests that an appropriate award is one between \$8,988 (21.4 hours x \$420 per hour) and \$11,984 (21.4 hours x \$560 per hour). [DN 27 at 5, 6.]¹

This Court recently approved a rate of \$500 per hour. *Keith v. Comm’r*, No. 5:16-CV-00103-LLK. The Court finds that Ms. Wilson’s experience in Social Security cases is comparable to that of counsel in *Keith*. Therefore, a fee request in the amount of \$10,700 (21.4 hours x \$500 per hour) would have been

¹ The \$8,988 suggestion is based on the fact that Magistrate Judge Brennenstuhl approved a rate of \$420 per hour in *Kishbaugh v. Comm’r*, No. 4:17-CV-00107-HBB, 2019 WL 3483163 (W.D. Ky. July 31, 2019). The \$11,984 suggestion is based *Lasley’s* comment that a rate that “quadrupled ... the standard rate” was “grossly” excessive. *Lasley*, 771 F.3d at 310. As noted above, the standard rate in the Western District of Kentucky is \$140 per hour (\$140 x 4 = \$560).

reasonable. Counsel seeks \$10,240. Subtracting the \$2,675 EAJA fee that counsel apparently intends to keep, counsel seeks \$7,565.

ORDER

For the foregoing reasons, it is hereby ORDERED that attorney M. Gail Wilson's motion for attorney fees under 42 U.S.C. § 406(b) [DN 26] is GRANTED. Ms. Wilson is AWARDED a fee for legal services, under 42 U.S.C. § 406(b), in the amount of \$7,565. The Commissioner shall PAY Ms. Wilson from Plaintiff's past-due benefits being withheld for payment of attorney fees.

April 27, 2020



**Lanny King, Magistrate Judge
United States District Court**