

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT ERIC FRYE,

Plaintiff,

Case # 14-CV-6174-FPG

v.

DECISION AND ORDER

NANCY A. BERRYHILL,¹ ACTING
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

By Stipulation and Order dated December 19, 2014, this case was remanded to the Acting Commissioner of Social Security for further administrative proceedings. ECF No. 13. On the same day, the Clerk of Court entered Judgment in Plaintiff's favor. ECF No. 14. By Stipulation and Order dated February 9, 2015, Plaintiff's counsel was awarded \$5,278.84 in attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 ("EAJA"). Currently before the Court is Plaintiff's Motion for Attorney Fees pursuant to 42 U.S.C. § 406(b). In response, the Commissioner indicated that she did not oppose the requested fee award.

Section 406(b) provides:

Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment.

42 U.S.C. § 406(b)(1).

The Court must determine whether the fee is reasonable. *Wells v. Sullivan*, 907 F.2d 367, 372 (2d Cir. 1990). To do so, the Court considers whether: (1) the contingency percentage is

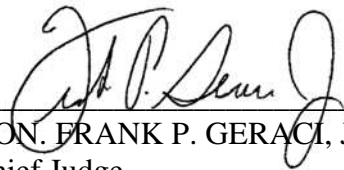
¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security and is therefore substituted for Carolyn W. Colvin as the defendant in this suit pursuant to Federal Rule of Civil Procedure 25(d).

within the 25% cap; (2) there has been fraud or overreaching in making the agreement; and (3) the requested amount is so large as to be a windfall to the attorney. *Id.* (citations omitted).

After reviewing Plaintiff's application, the Court finds that the amount requested does not exceed the statutory 25% cap, there is no evidence of fraud or overreaching, and the amount is not so large as to be a windfall to the attorney. Accordingly, Plaintiff's Motion for Attorney Fees (ECF No. 18) is GRANTED under 42 U.S.C § 406(b) in the amount of \$19,293.73. The Commissioner shall promptly pay this sum to Plaintiff's counsel. Additionally, as represented in the Motion for Attorney Fees, Plaintiff's counsel is directed to refund to his client the \$5,278.84 that he received in attorney fees under EAJA.

IT IS SO ORDERED.

DATED: July 19, 2017
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court