

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:11-CV-347-BO

JIMMY RADFORD,
Plaintiff,

v.

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,
Defendant.

ORDER

Plaintiff's counsel has moved for attorney's fees and costs pursuant to 42 U.S.C. § 406(b) [DE 61]. Counsel for the Acting Commissioner has responded, not taking a position but asking the Court to consider the reasonableness of the fee. For the reasons stated herein, plaintiff's counsel's motion is GRANTED but the total fee awarded is REDUCED.

DISCUSSION

Plaintiff's counsel seeks fees pursuant to 42 U.S.C. § 406(b). Section 406(b)(1) allows the Court to award a "reasonable fee" of up to twenty-five percent of the past due benefits paid to the plaintiff. This Court reviews the requested fee for reasonableness, and may reduce the fee if, for example, the attorney is responsible for a delay in the proceedings or the award would amount to a windfall to counsel. *Gisbrecht v. Barnhart*, 535 U.S. 789, 808-09 (2002).

Plaintiff's counsel states that plaintiff has been awarded \$125,920 in past-due benefits and that \$30,980 has been withheld by the Acting Commissioner for payment of attorney's fees. Counsel seeks \$24,980 in attorney's fees. Counsel represents that she spent eighty-two and one-half hours working on plaintiff's case.

While the number of hours spent by counsel represents her successful work in this court and the court of appeals, the Court finds that an award of \$24,980 would be


unreasonable and would amount to a windfall in this instance. The Court finds that under the circumstances of this case an award of \$20,000 in fees is appropriate.

CONCLUSION

For the foregoing reasons, plaintiff's motion for attorney's fees pursuant to §406(b)(1) is GRANTED, but the award is reduced to \$20,000. Counsel shall reimburse the \$10,000 Equal Access to Justice Act fee to plaintiff as it represents the lesser of the two fees awarded.

SO ORDERED.

This 6 day of February, 2015.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE