

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

OSVALDO GARCIA,

Plaintiff,

v.

NANCY A. BERRYHILL,¹
Deputy Commissioner for Operations,
performing the duties and functions not
reserved to the Commissioner of Social
Security,

Defendant.

CASE NO. 4:15-cv-00259-GBC

(MAGISTRATE JUDGE COHN)

OPINION AND ORDER

OPINION AND ORDER

The Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) filed by the Plaintiff's counsel, (Doc. 27), is before the court for decision.

In McGraw v. Barnhart, 450 F.3d 493, 492 (10th Cir. 2006), the Court ruled that attorney fees were awardable under 42 U.S.C. § 406(b)(1) when the Social Security Administration awards disability benefits to a claimant following a remand from the federal court. In such circumstances the authority of Fed. R. Civ. P. 60(b)(6) is employed to allow counsel to seek fees under § 406(b)(1) long after the usual fourteen days allotted by Fed. R. Civ. P. 54 (d)(2)(B)(i) for filing a motion for attorney fees has expired. McGraw, 450 F.3d at 505.

¹ Ms. Berryhill, Deputy Commissioner for Operations, is leading the Social Security Administration pending the nomination and confirmation of a Commissioner. Pursuant to Federal Rule of Civil Procedure 25(d), Deputy Commissioner for Operations Berryhill should be substituted as the defendant in this action. No further action need be taken to continue this suit by reason of the last sentence of the Social Security Act, 42 U.S.C. § 405(g).

The court remanded this case to the Commissioner for further administrative action, pursuant to sentence four of 42 U.S.C. § 406(g). On July 23, 2018, the Commissioner issued a fully favorable decision. Counsel's motion for relief under Rule 60(b)(6) was filed on August 2, 2018. Counsel represents that, as of the date of filing the instant motion, the Notice of Award containing the amount of past due benefits has not been received. Consequently, the amount of the contingency attorney fee cannot be ascertained. Counsel requests an order allowing the filing of the motion for 406(b) fees within sixty days of receipt of the Notice of Award.

The court finds that the instant motion was filed within a reasonable time of the decision awarding benefits and that the request for sixty days from the receipt of the Notice of Award in which to file a motion for fees under § 506(b) is reasonable.

The Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) is GRANTED, as follows: a motion for an attorney fee award under § 406(b), together with the required notice to Plaintiff and statement concerning any objection thereto, may be filed within 60 days of the Notice of Award.

SO ORDERED on August 30, 2018.

A handwritten signature in black ink, appearing to read "Gerald B. Cohn", is written over a horizontal line.

Gerald B. Cohn
United States Magistrate Judge