

25 percent of the past due benefits”). In addition, the Court has previously awarded \$6587.40 in attorney’s fees pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. §§ 2412 et seq. *See* Order of July 2, 2018 (Doc. No. 29). Plaintiff’s attorney now requests an award of \$18,434.10, which is less than the sum of the funds being withheld (less \$6000.00 available to pay Plaintiff’s administrative-level representative, *see* Pl.’s Mot. Att’y Fees at 2) and the previous EAJA award amount.

Subsection 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)(A). Any such payment must be made “out of, and not in addition to,” the past-due benefits owed to the claimant. *Id.* This subsection “does not displace contingent-fee agreements as the primary means by which fees are set for successfully representing Social Security benefits claimants in court” so long as the agreed-upon amount stays within the statute’s “25 percent boundary.” *Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002). For a fee request that lies within this boundary, “the attorney for the successful claimant” still “must show that the fee sought is reasonable for the services rendered.” *Id.*

The Commissioner has responded that he has no objection to Plaintiff’s counsel’s current request for \$18,434.10 in fees. *See* Def.’s Resp. (Doc. No. 35) at 1-2. The Commissioner correctly notes, however, that if fees are now awarded pursuant to § 406(b)

Plaintiff's counsel must refund the lesser EAJA award to Plaintiff. *See id.* at 2; Order of July 2, 2018, at 1-2; *McGraw v. Barnhart*, 450 F.3d 493, 497 & n.2 (10th Cir. 2006).

Having carefully reviewed the parties' submissions, the Court finds that an award of \$18,434.10, which is less than 25% of the past-due benefits awarded, is a reasonable fee award for the work performed in this case in view of the contingent nature of the representation, the applicable attorney-fee agreement, and the results achieved. While before the Court, Ms. Hedrick filed a detailed opening brief, presenting a well-supported argument that the administrative law judge erred in denying Plaintiff's DIB and SSI claims. *See* Doc. No. 19. The Commissioner filed a brief in opposition, which Ms. Hedrick was required to review. *See* Doc. No. 22; Pl.'s Mot. Att'y Fees Ex. 3 (Doc. No. 34-3) at 2. Ms. Hedrick represents that her firm spent 34.4 hours litigating Plaintiff's disability case in federal court, which would result in an effective hourly rate of \$559.95 with respect to the relevant portion of the requested § 406(b) fee. *See* Pl.'s Mot. Att'y Fees at 12; *see Gisbrecht*, 535 U.S. at 793, 808 (rejecting the "lodestar" method of calculating fee awards under § 406(b) but noting that the district court may consider the hours spent and other factors in contingency-fee cases to help assess "the reasonableness of the fee yielded by the fee agreement"); *cf. Harlan v. Colvin*, No. CIV-13-477-D, 2015 WL 9295809, at *1 (W.D. Okla. Dec. 18, 2015) (awarding \$17,429.22 where the putative rate was between \$517.95 and \$632.64 per hour). Plaintiff and Ms. Hedrick agreed that the latter may collect attorney's fees for representation before the Court for an amount greater than the currently pending request. *See* Pl.'s Mot. Att'y Fees Ex. 1, at 1.

Accordingly, Plaintiff's Motion for Attorney Fees (Doc. No. 34) is GRANTED. Plaintiff's attorney Ms. Melissa Hedrick is awarded attorney's fees in the amount of \$18,434.10, to be paid out of the past-due benefits Plaintiff received by reason of the remand and favorable decision in this case. *See* 42 U.S.C. 406(b)(1)(A). The Social Security Administration shall pay this amount directly to: Melissa S. Hedrick, 630 NE 63rd Street, Oklahoma City, Oklahoma 73105. Upon payment, Ms. Hedrick shall promptly refund to Plaintiff the \$6587.40 previously awarded under 28 U.S.C. § 2412. *See* Order of July 2, 2018, at 1-2; *McGraw*, 450 F.3d at 497 & n.2.

IT IS SO ORDERED this 19th day of September, 2019.



CHARLES B. GOODWIN
United States District Judge