

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

DONTRELL DELOCH,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-18-578-D
)	
ANDREW M. SAUL, Commissioner)	
of Social Security Administration,)	
)	
Defendant.)	

ORDER AWARDING ATTORNEY FEE

Before the Court is the Motion for Attorney Fees Under 42 U.S.C. § 406(b) [Doc. No. 26]. Plaintiff’s attorney, Miles L. Mitzner, seeks approval of a fee award in the amount of \$14,148.25 under § 406(b), to be paid out of Plaintiff’s award of past-due benefits in accordance with a fee agreement. Defendant has filed a Response [Doc. No. 27], which takes no position other than to remind the Court of its obligation to determine a reasonable attorney fee and Mr. Mitzner’s obligation to refund to Plaintiff the lesser of any § 406(b) award or the amount previously awarded under the Equal Access to Justice Act (EAJA).

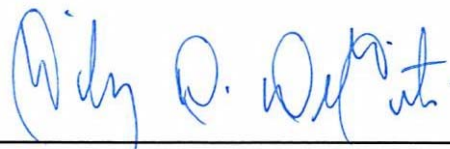
Upon consideration of the Motion in light of *Gisbrecht v. Barnhart*, 535 U.S. 789 (2002), and *Wrenn v. Astrue*, 525 F.3d 931 (10th Cir. 2008), the Court finds that Plaintiff’s attorney may recover a reasonable fee for the representation of Plaintiff in this case up to the statutory limit of 25% of past-due benefits, provided the attorney refunds the lesser EAJA fee award. *See Gisbrecht*, 535 U.S. at 796; *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986); *see also* 4/1/19 Order [Doc. No. 23]. Plaintiff’s representation in this

case involved a total of 31.5 hours of legal services (27.1 attorney hours and 4.4 paralegal hours), which resulted in a favorable judicial decision. After remand, Plaintiff was determined to be entitled to benefits and was awarded a past-due amount of \$ \$56,593.00. The Motion has been timely filed within the deadline previously set by the Court. *See* 4/28/20 Order [Doc. No. 25].

Under the circumstances presented, the Court finds that the requested amount of \$14,148.25 represents a reasonable fee award for the work done by Plaintiff's attorney in this case, taking into account the contingent-fee agreement and other pertinent factors. *See Gisbrecht*, 535 U.S. at 808. The amount does not exceed 25% of Plaintiff's award of benefits obtained by reason of the Judgment and Order of Remand entered December 28, 2018, and fairly accounts for the contingency nature of the representation and the delay in receiving payment. The Court finds that \$14,148.25 represents a reasonable § 406(b) fee award, provided that Plaintiff's attorney refunds the prior EAJA fee award of \$5,000.00.

IT IS THEREFORE ORDERED that the Motion for Attorney Fees Under 42 U.S.C. § 406(b) [Doc. No. 26] is GRANTED. The Court approves an award of attorney fees under 42 U.S.C. § 406(b) to be paid by Defendant to attorney Miles L. Mitzner in the amount of \$14,148.25. Upon payment, Plaintiff's attorney shall promptly refund to Plaintiff Dontrell Deloch the amount of the previous EAJA fee award of \$5,000.00.

IT IS SO ORDERED this 15th day of May, 2020.



TIMOTHY D. DeGIUSTI
Chief United States District Judge