

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Josette Oneill,

Plaintiff,

v.

Nancy A. Berryhill, Acting Commissioner of
Social Security,

Defendant.

Case No. 4:13-cv-0154-TLW

ORDER

On January 15, 2013, Plaintiff filed this action seeking review of the Commissioner's decision denying her disability claim. ECF No. 1. On April 25, 2014, United States Magistrate Judge Thomas E. Rogers, III issued a Report and Recommendation which recommended reversing the Commissioner's decision and remanding the case for further administrative action. ECF No. 20. On August 28, 2014, the Court accepted the Report and Recommendation over the Commissioner's objections. ECF No. 27. Plaintiff then moved for attorney's fees of \$4,249.34 under the Equal Access to Justice Act (EAJA), ECF No. 29, which the Court granted by order dated February 26, 2015, ECF No. 32. On August 4, 2015, the Social Security Administration issued a Notice of Award to Plaintiff, indicating that Plaintiff and her family members would receive retroactive benefits beginning in January 2008. ECF No. 33-2.

This social security matter is now before the Court on Plaintiff's counsel's Motion for Attorney Fees pursuant to 42 U.S.C. § 406(b)(1) and Local Civil Rule 83.VII.07, filed on November 5, 2015. ECF No. 33. Plaintiff's attorney seeks to recover \$12,268.50 in attorney's fees

based on 25% of the total retroactive benefits awarded.¹ *Id.* The motion and related filings include relevant case law, the hourly rate calculation for the requested fees, affidavits of other experienced attorneys, and the fee agreement between Plaintiff and her counsel. ECF Nos. 33, 38. The Commissioner opposes the motion. ECF No. 35. Specifically, the Commissioner agrees that Plaintiff's counsel is entitled to fees but requests that the fees be "reduced to an amount which will reasonably compensate the attorney's and paralegals' 35 hours of representational work performed before this Court." *Id.* The Commissioner also requests that Plaintiff's counsel refund \$4,409.89 to Plaintiff because counsel previously received this amount in EAJA fees. *Id.* Plaintiff's counsel agrees that the EAJA fees should be refunded and argues that paralegal fees should be considered to analyze the reasonableness of the requested amount. ECF No. 38.

The Social Security Act provides that the Court may determine and allow a reasonable fee for representation not to exceed 25% of the total past-due benefits to which the claimant is entitled. 42 U.S.C. § 406(b)(1)(A). The Court concludes that counsel in this case has obtained a favorable result for the Plaintiff, caused no unusual delay, and has provided thorough and adequate representation. Furthermore, the amount requested by counsel is not greater than 25% of the past-due benefits recovered by Plaintiff as required by 42 U.S.C. § 406(b).

The Court finds that the agreement and requested fees in the amount of \$12,268.50, representing an effective hourly rate of \$350.53 per hour, including 23.75 hours of paralegal² and

¹ Plaintiff received total net back pay of \$ \$49,074.00. Twenty-five percent of the net back pay is \$12,268.50.

² In *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571 (2008), the Supreme Court held that a prevailing party that satisfies the EAJA's other requirements is not limited in its recovery of paralegal fees to its attorney's cost for such services, but may recover its paralegal fees. While the instant case relates to the Social Security Act, the Court in *Richlin* reasoned that using paralegal

11.25 hours of attorney work, are reasonable in this case. The Court notes that, even if paralegal work was not performed, the attorney would have performed 35 hours of work at an average of \$350.53 per hour. This hourly rate is less than the contingent hourly amount recommended for social security cases by four experienced lawyers in their affidavits. ECF Nos. 33-3 at 4 (“I bill at a non-contingent rate of \$375/hour. [However, c]ontingent fees should be higher than—and not just equivalent to—a non-contingent fee to encourage lawyers to assume the risk.”); 33-4 (attesting that the fair market value of an experienced attorney in similar cases is \$450 per hour); 33-5 (attesting that the fair market value of an experienced attorney’s brief writing in similar cases is \$450 per hour); 33-6 (attesting that the fair market value of an experienced attorney’s brief writing in similar cases is \$450 per hour). The Commissioner argues generally that the fees requested in this case are high. However, the Commissioner has not responded to the affidavits provided by the Plaintiff or asserted that the hours spent by the attorney or the paralegal were inappropriate or inflated.

The Court has carefully reviewed the relevant case law, the filings, counsel’s fee petition, and the accompanying fee agreement. In light of the fact that the Commissioner has not presented evidence to support her position, the Court finds that the request for fees pursuant to § 406(b) is reasonable. Accordingly, **IT IS ORDERED** that Plaintiff’s Motion for Attorney’s Fees pursuant to the Social Security Act, 42 U.S.C. § 406(b), ECF No. 33, is hereby **GRANTED** in the amount of \$12,268.50.

Because Plaintiff’s attorney was previously awarded attorney’s fees in this action pursuant to the EAJA in the amount of \$4,409.89, that amount must be refunded to the Plaintiff pursuant to

work ultimately reduces the total fees in social security cases. The same is true for the paralegal fees in this case.

Gisbrecht v. Barnhart, 535 U.S. 789, 796 (2002), resulting in a net fee award to Plaintiff's attorney of \$8,019.60.

IT IS SO ORDERED.

s/ Terry L. Wooten _____
Terry L. Wooten
Chief United States District Judge

April 3, 2017
Columbia, South Carolina