

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

CHRISTINA LU ROMAN,

Plaintiff,

v.

Case No. 14-CV-1541-JPS

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

ORDER

On May 13, 2015, the Court remanded this case to the Commissioner of Social Security, pursuant to the parties' stipulation. (Docket #16, #17, and #18). After remand, the parties stipulated, and the Court ordered, that Plaintiff's counsel should receive an award of attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, in the amount of \$4,700. (Docket #20). On April 18, 2016, the Commissioner, considering the matter on remand, issued a fully favorable decision to Plaintiff. (Docket #21 at 1).

On October 31, 2016, Plaintiff's counsel filed a motion for an award of attorney's fees pursuant to 42 U.S.C. § 406(b)(1). *Id.* In this case, Plaintiff and her counsel originally negotiated counsel's fee at twenty-five percent of whatever past-due benefits would be awarded to her and her family. *Id.* Section 406(b) permits the Court to award this agreed-upon fee. It provides that, after entering judgment in favor of a claimant who was represented by counsel, the Court may award the attorney a reasonable fee for his or her work before the Court. 42 U.S.C. § 406(b)(1)(A). The fee cannot exceed twenty-five percent of the total past-due benefits to which the claimant is entitled by reason of the judgment. *Id.* In this case, counsel represents that

their outstanding fee under Section 406(b), less amounts already paid, is \$9,396.75. (Docket #21 at 2). This amount includes \$8,200 that the Commissioner is already withholding for purposes of a fee award, plus \$1,196.75 that should have been withheld, but was not, from a portion of benefits paid to Plaintiff's son. *Id.*

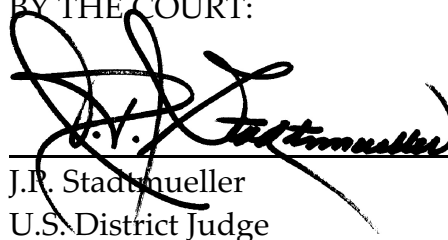
The Commissioner, acting in a role "resembling that of a trustee" for Plaintiff, *Gisbrecht v. Barnhart*, 535 U.S. 789, 798 (2002), has filed a response indicating that she does not oppose counsel's requested fees. (Docket #23). In light of counsel's submissions and Defendant's non-opposition, the Court finds that the fees requested are both reasonable and necessary and qualify under Section 406(b).¹

Accordingly,

IT IS ORDERED that the motion for an award of attorney's fees pursuant to 42 U.S.C. § 406(b) (Docket #21) be and the same is hereby **GRANTED**; the Commissioner shall pay \$9,396.75 from the withheld funds directly to Plaintiff's lead counsel, Thomas E. Bush.

Dated at Milwaukee, Wisconsin, this 1st day of May, 2017.

BY THE COURT:



J.R. Stadtmueller
U.S. District Judge

¹Counsel are required to refund amounts paid to them under the EAJA if they are awarded fees under Section 406(b). 42 U.S.C. § 406(b)(1)(A). But counsel notes that the \$4,700 the Court previously awarded them under the EAJA was never actually paid because the government confiscated it to pay Plaintiff's student loans. (Docket #21 at 2).