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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WISCONSIN

AARON W. SCHILLER,

Plaintiff,

v.

Case No. 15-CV-1311-JPS

NANCY A. BERRYHILL, Acting Commissioner of Social Security,

Defendant.

ORDER

On June 13, 2016, the Court remanded this case to the Commissioner of Social Security, pursuant to the parties' stipulation. (Docket #21, #22, and #23). 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 \$13,660.65.¹ On March 14, 2017, the Commissioner, considering the matter on remand, issued a fully favorable decision to Plaintiff. (Docket #26 at 1).

On August 23, 2017, 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 his counsel originally negotiated counsel's fee at twenty-five percent of whatever past-due benefits would be awarded to him. *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

¹That amount is comprised of two smaller amounts awarded in two separate district court actions brought by Plaintiff, who was represented in both cases by the same attorney. *See* (Docket #26 at 2). The instant action is one of those two.

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 his outstanding fee under Section 406(b) is \$36,549.00. (Docket #26 at 2).

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 opposed counsel's requested fees. (Docket #27). 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).²

Accordingly,

IT IS ORDERED that the motion for an award of attorney's fees pursuant to 42 U.S.C. § 406(b) (Docket #26) be and the same is hereby GRANTED; the Commissioner shall pay \$36,549.00 from the withheld funds directly to Plaintiff's counsel, Frederick Daley.

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

BY THE COURT:

P. Stadtmueller

U.S. District Judge

²Counsel 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). The instant motion suggests—though it does not actually state—that Plaintiff's counsel has not yet been paid the Court's earlier EAJA awards. *See* (Docket #26 at 6). He represents, however, that he will credit to Plaintiff the EAJA fees. *Id*.