

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

AMY RODENBERG,

Plaintiff,

OPINION & ORDER

v.

13-cv-365-jdp

NANCY BERRYHILL
Acting Commissioner of
Social Security,

Defendant.

Dana Duncan, counsel for plaintiff Amy Rodenberg, has renewed his request for attorney fees under 42 U.S.C. § 406(b) in this case for Social Security disability benefits. Dkt. 56. Section 406(b) allows the court to award a prevailing plaintiff's attorney a reasonable fee, but no greater than 25 percent of past-due benefits. *Gisbrecht v. Barnhart*, 535 U.S. 789, 792 (2002). *See also McGuire v. Sullivan*, 873 F.2d 974, 980 (7th Cir. 1989) ("A court may award a fee up to that provided in the [contingency-fee] contract so long as the court has reviewed its reasonableness.").

The court stayed a decision on Duncan's first request when there was a discrepancy between the number of hours Duncan claimed in his brief (approximately 45 hours) and the hours he claimed on his time sheet (32 hours), making it impossible for the court to assess the reasonableness of counsel's request. The court gave Duncan an opportunity to file supplemental materials to provide clarification. Dkt. 51.

In response, Duncan said that his brief *and* his time sheet were incorrect and he provided a third figure, 39.4 hours. Dkt. 52. Although he "assur[ed] the Court that every effort is being made to insurance [sic] ongoing accuracy," he also said that he "is unsure where the error

occurred” and he failed to identify any additional steps he will take to prevent future errors. *Id.* at 1–2. Because Duncan had a long history in this court of making similar errors, the court denied his request for fees without prejudice to his renewing the request after identifying specific steps he will take in the future to ensure the accuracy of his filings. Dkt. 54.

It took him more than two months, but Duncan has renewed his request. He identifies several steps he has taken to improve the quality and accuracy of his fee petitions:

- proofreading each request by two people, one of whom had no input in preparing the request;
- hiring a consultant to assist him in improving the work flow of his office;
- hiring additional staff;
- reducing his number of hearings.

The court is persuaded that counsel is making good faith efforts to address the court’s concerns and will approve his request for fees. The total award counsel requests is \$10,996.25, including the \$5,358.74 the court previously awarded under the Equal Access to Justice Act. This amount is 25% of the \$43,985 in benefits awarded Rodenberg and is within the limits set by § 406(b). It represents an effective hourly rate of \$279.09, which is reasonable in light of the results counsel achieved.

ORDER

IT IS ORDERED that attorney Dana Duncan’s motion for attorney fees, Dkt. 56, is GRANTED. Duncan is AWARDED \$5,637.51 in fees under 42 U.S.C. § 406(b). Because that amount excludes the \$5,358.74 that Duncan received under the Equal Access to Justice Act,

Duncan need not return his EAJA award. The remaining amount withheld by the Social Security Administration should be paid to plaintiff Amy Rodenberg.

Entered June 22, 2018.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge