

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

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DEBORAH CRASS,

Plaintiff,

v.

NANCY A. BERRYHILL,  
Acting Commissioner of Social Security,

Defendant.

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ORDER

16-cv-39-slc

On July 28, 2016, the court granted the parties' joint motion to remand this case for further proceedings before an administrative law judge, pursuant to sentence four of 42 U.S.C. § 405(g). *See* dkts. 10 & 11. On September 16, 2016, the court accepted the parties' stipulation on fees under the Equal Access to Justice Act and awarded plaintiff attorneys' fees in the amount of \$5,626.98. *See* dkts. 13-19.

On July 11, 2017, plaintiff's counsel, Dana Duncan, filed a motion for attorneys fees (dkt. 21), reporting a favorable decision from the ALJ on remand, the award of \$34,878.60 in past-due benefits, the existence of a 25% contingent fee agreement between plaintiff and his attorney (resulting in a fee of \$8,719.65 in this case), and an accounting of the time he spent on plaintiff's case. According to Duncan, the agency withheld 25% of plaintiff's past-due benefit award (or \$8,719.65) to pay attorney fees. Pursuant to 42 U.S.C. § 406(b), Attorney Duncan requests an order awarding a fee for court work in the amount of \$3,092.67 (equal to \$8,719.65 less the previously awarded \$5,626.98) to be payable out of plaintiff's past-due benefits.

The requested fee is within the statutory cap of 25% of past-due benefits, but the court must nevertheless review it to ensure that it is reasonable in light of the character of the representation and the results obtained; the time, labor, and skill required; the attorney's experience, reputation, and ability; and awards in similar cases. *Gisbrecht v. Barnhart*, 535 U.S. 789, 807-09 (2002); *McGuire v.*

*Sullivan*, 873 F.2d 974, 979-83 (7th Cir. 1989). Here, the requested award is reasonable. Plaintiff's attorney seeks a total of \$8,719.65 in fees for 72.6 hours of work by administrative, paralegal and attorney staff, which amounts to an average hourly rate of about \$120. See *Koester v. Astrue*, 482 F. Supp. 2d 1078, 1083 (E.D. Wis. 2007) (collecting cases showing that district courts have awarded representative fees that reflect hourly rates as high as \$400 to \$1,500). Attorney Duncan is an experienced attorney who represented plaintiff in this court, reviewed the administrative record, drafted a motion for summary judgment, and prompted and negotiated a stipulated remand, which resulted in a favorable determination below. In addition, the Commissioner, by counsel, does not oppose the motion. See *dk. 24*. Accordingly, the court will grant Duncan's motion for attorney fees in the amount of \$3,092.67 and direct that the remaining portion of the statutory fee (or \$5,626.98) be released to plaintiff.

#### ORDER

It is ORDERED that plaintiff's motion for attorney fees pursuant to 42 U.S.C. § 406(b), *dk. 21*, is GRANTED. The court approves a representative fee award of \$3,092.67 to be payable to plaintiff's attorney, Dana Duncan, out of plaintiff's past-due benefits. The remaining portion of the statutory fee (or \$5,626.98) shall be released to plaintiff.

Entered this 21<sup>st</sup> day of July, 2017.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge