

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

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TINA M. BENNETT,

Plaintiff,

v.

OPINION and ORDER

KILOLO KIJAKAZI,  
Acting Commissioner of  
Social Security,<sup>1</sup>

19-cv-987-jdp

Defendant.

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Meredith E. Marcus, counsel for plaintiff Tina Bennett, moves under 42 U.S.C § 406(b) for a fee award of \$5,000. Dkt. 18. The commissioner has reserved \$21,280.63, 25 percent of Bennett's award for past-due benefits, for attorney fees.<sup>2</sup> Dkt. 18-1. Counsel's requested fee is less than 25 percent of Bennett's past-due benefits, so it falls within the amount allowed by statute and the parties' fee agreement. Dkt. 18-2. The motion is unopposed. Dkt. 18, ¶ 12.

Counsel's firm spent 10.75 hours on this case for proceedings in this court, resulting in a proposed effective rate of \$465.12 per hour. Of the 10.75 hours, 5.55 hours were attorney time and the remainder was for counsel's legal and office assistants. Dkt. 18-4. Counsel's requested rate is on the high side, but this court has approved similar and even higher rates under § 406(b) for comparable results. *See, e.g., DeBack v. Berryhill*, No. 17-cv-924-jdp, Dkt. 31 (W.D. Wis. May 4, 2020) (approving effective rate of \$800 per hour); *Fischer v. Saul*, No. 17-

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<sup>1</sup> The court has updated the caption pursuant to Federal Rule of Civil Procedure 25(d).

<sup>2</sup> The total amount of Bennett's past-due benefits isn't in the record. But a notice from the agency provides that \$21,280.63 represents 25 percent of the benefit award, Dkt. 18-1, and the commissioner doesn't dispute that figure.

*cv-327-jdp*, 2019 U.S. Dist. LEXIS 181868, 2019 WL 5310676 (W.D. Wis. Oct. 21, 2019) (approving effective rate of \$641 per hour). And the requested fee is significantly less than 25 percent of plaintiffs' benefit award. Counsel's requested fee is reasonable in light of counsel's risk of non-recovery, the work she performed, the results she obtained, and the amounts awarded in similar cases. The court will grant counsel's motion. For simplicity, the court will subtract the \$1,400 fee that counsel received under the Equal Access to Justice Act, which would otherwise have to be refunded to Bennett.

ORDER

IT IS ORDERED that Meredith E. Marcus's motion for attorney fees under 42 U.S.C. § 406(b), Dkt. 18, is GRANTED. The court approves a representative fee of \$3,600.00.

Entered April 22, 2022.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge