

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

DOMINIC BANIS,

Plaintiff,

v.

OPINION and ORDER

KILOLO KIJAKAZI,
Acting Commissioner of
Social Security,¹

20-cv-1107-jdp

Defendant.

Dana W. Duncan, counsel for plaintiff Dominic Banis, moves under 42 U.S.C § 406(b) for a fee award of \$11,369.00. Dkt. 24. That figure represents 25 percent of Banis's award for past-due benefits,² so it falls within the amount allowed by statute and the parties' fee agreement. Dkt. 24-1. The motion is unopposed. Dkt. 26.

Duncan spent 20.8 hours on this case for proceedings in this court, Dkt. 24-3, so his requested fee results in a proposed effective rate of approximately \$546 per hour. Duncan's requested rate is on the high side, but this court has approved similar rates before under § 406(b). *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-cv-327-jdp, 2019 WL 5310676 (W.D. Wis. Oct. 21, 2019) (approving effective rate of \$641 per hour). And Duncan's paralegal staff spent an additional 9.15 hours working on Banis's case, Dkt. 24-3,

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

² The total amount of Banis's past-due benefits isn't in the record. But a notice from the agency provides that \$11,369.00 represents 25 percent of the benefit award, Dkt. 24-2, at 2, and the commissioner doesn't dispute that figure.

which further supports the reasonableness of this rate. *See Richlin Sec'y Serv. Co. v. Chertoff*, 553 U.S. 571, 581 (2008) (reasonable attorney fee under EAJA includes paralegal time); *Missouri v. Jenkins*, 491 U.S. 274, 285 (1989) (reasonable attorney fee under 42 U.S.C. § 1988 includes paralegal time).

The court concludes that Duncan's requested fee is reasonable in light of his risk of non-recovery, the work he performed, the results he obtained, and the amounts awarded in similar cases. The court will grant the motion. For simplicity, the court will subtract the \$4,750 fee that Duncan received under the Equal Access to Justice Act, which would otherwise have to be refunded to Banis.

ORDER

IT IS ORDERED that Dana Duncan's motion for attorney fees under 42 U.S.C. § 406(b), Dkt. 24, is GRANTED. The court approves a representative fee of \$6,619.00.

Entered September 14, 2022.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge