

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Pires v. Commissioner of Social Security

Pires · No. 2:20-cv-1073-KJN · Decided March 3, 2023

OPINION

(SS) Pires v. Commissioner of Social Security

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 JOE PIRES, No. 2:20-cv-1073-KJN 12 Plaintiff, ORDER 13 v. (ECF Nos. 26, 28)

14 COMMISSIONER OF SOCIAL

SECURITY,

15 Defendant. 16

17 Presently before the court is counsel for plaintiff’s motion for attorney’s fees under 42 18
U.S.C. § 406(b), seeking a total award of \$23,786.30, or 25% of plaintiff’s past-due benefits.¹ 19
Plaintiff’s counsel agrees to credit plaintiff \$4,811.75 for EAJA fees previously paid. (ECF No. 20
26 at 2.) The Commissioner neither assents nor objects to the fee request and takes no position on
21 the reasonableness of the request. (ECF No. 28.) 22 For the reasons that follow, the
undersigned grants the motion for attorney’s fees in the 23 amount of \$18,064.70, with
reimbursement to Pires of \$4,811.75 in previously awarded EAJA 24 fees.² 25 1 This matter is
before the undersigned pursuant to 28 U.S.C. § 636(c) based on the consent of all 26 parties. (ECF
Nos. 3, 7, 9.) 27 2 Plaintiff already received \$5,721.30 of the \$23,786.30 in administrative fee
payments. (ECF No. 28 26-1.) 1 Background 2 On August 27, 2021, the undersigned granted
plaintiff’s motion for summary judgment 3 and remanded the case for further proceedings. (ECF
No. 22.) Thereafter, the parties stipulated 4 to an award of fees and costs under the Equal Access
to Justice Act (“EAJA”), and the 5 undersigned awarded attorney’s fees in the amount of
\$4,811.75. (ECF Nos. 24, 25.) 6 Subsequently, plaintiff’s counsel petitioned the Office of
Hearings and Appeals (“OHA”) for 7 attorney’s fees and received \$5,721.30 for work in front of
OHA. (ECF No. 26-3.) After remand, 8 an ALJ issued a favorable decision for plaintiff, awarding
past-due benefits in the amount of 9 \$95,144.00, of which \$23,786.00 was withheld for payment
of fees. (ECF Nos. 26-1 at 1, 26-2 at 10 4.) 11 Plaintiff’s counsel now moves for attorney’s fees
under 42 U.S.C. § 406(b), seeking an 12 award of \$18,064.70 (25% of past due amount of
\$95,144.00 after deduction of administrative fee 13 payment of \$5,721.30 already awarded to
counsel for work in front of OHA). (ECF No. 26 at 2.)

14 DISCUSSION

15 Title 42 U.S.C. § 406(b) provides in relevant part:

16 Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an 17 attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 18 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment, and the Commissioner of 19 Social Security may. . . certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such 20 past-due benefits. In case of any such judgment, no other fee may be payable or certified for payment for such representation except 21 as provided in this paragraph. 22 42 U.S.C. § 406(b)(1)(A). The Commissioner typically does not act as an adversary, but “plays a 23 part in the fee determination resembling that of a trustee for the claimants.” *Gisbrecht v. 24 Barnhart*, 535 U.S. 789, 798 n.6 (2002). Thus, “[b]ecause the [Commissioner] has no direct 25 interest in how much of the award goes to counsel and how much to the disabled person, the 26 district court has an affirmative duty to assure that the reasonableness of the fee is established.” 27 *Crawford v. Astrue*, 586 F.3d 1142, 1149 (9th Cir. 2009) (en banc). 28 In reviewing the fee request, the district court is to look first to the parties’ contingency- 1 fee agreement, then test it for reasonableness—respecting “the primacy of lawful attorney-client 2 fee agreements” *Gisbrecht*, 535 U.S. at 793 (2002) (noting that courts following this method 3 have “appropriately reduced the attorney’s recovery based on the character of the representation 4 and the results the representative achieved”). To this end, the Ninth Circuit instructs: 5 A fee resulting from a contingent-fee agreement is unreasonable, and thus subject to reduction by the court, if the attorney provided 6 substandard representation or engaged in dilatory conduct in order to increase the accrued amount of past-due benefits, or if the 7 benefits are large in comparison to the amount of time counsel spent on the case. As an aid to the court’s assessment of the 8 reasonableness of the fee yielded by the fee agreement, but not as a basis for satellite litigation, the court may require counsel to 9 provide a record of the hours worked and counsel’s regular hourly billing charge for noncontingent cases. The attorney bears the 10 burden of establishing that the fee sought is reasonable. 11 *Crawford*, 586 F.3d at 1148 (citations omitted). The attorney bears the burden of establishing the 12 reasonableness of the fee. *Gisbrecht*, 535 U.S. at 807 fn. 17. 13 In support of the motion for attorney’s fees under 42 U.S.C. § 406(b), plaintiff’s counsel 14 attached an attorney-client agreement, which provided for a contingent fee of up to 25% of any 15 past due benefits. (ECF No. 26-4.) Counsel indicates Pires was awarded \$95,144.00 in past due 16 benefits, 25% of which (\$23,786.00) was withheld by the Commissioner for payment of counsel’s 17 fee. (ECF No. 26-2 at 4.) Plaintiff’s counsel now seeks a fee of \$18,064.70, which (alongside the 18 administrative fee payment of \$5,721.30 for work in front of OHA) is 25% of past due amount of 19 \$95,144.00. (ECF No. 26 at 2.) The Commissioner neither assents nor objects to the fee request, 20 and takes no position on the reasonableness of the request. (ECF No. 28.) 21 In light of the guidance provided in *Crawford*, the

court finds counsel's fee request here to 22 be reasonable. As an initial matter, agreements providing for fees of 25% of past due benefits are 23 the "most common fee arrangement between attorneys and Social Security claimants." Crawford, 24 586 F.3d at 1147. Additionally, neither the undersigned nor the Commissioner sees any 25 indication plaintiff's counsel performed substandard work or unduly delayed the case; to the 26 contrary, counsel's work ultimately resulted in a fully favorable decision for plaintiff and an 27 award of substantial benefits. Counsel also assumed the risk of receiving no compensation, as 28 plaintiff's application was denied three times before reaching this court. (ECF No. 22 at 3.)] Furthermore, the total amount sought does not appear to be wholly disproportionate to the 2 || amount of time plaintiff's counsel spent on the case. Plaintiff's counsel indicates they dedicated 3 || 23.7 hours to the appeal process, which equates to approximately \$1,003 per hour. (ECF No. 26- 4 | 5.) Plaintiffs counsel did not provide a normal billing rate, but even at this high rate, the amount 5 || requested cannot be said to amount to a windfall to plaintiff's counsel given the guidance in 6 | Crawford. See, e.g., Langston v. Saul, 2020 WL 4501941, at *3 (E.D. Cal. Aug. 5, 2020) 7 || (awarding fees on an effective hourly rate of \$1,453.42, when counsel requested \$23,400 for 8 | 16.10 hours of attorney work); Villa v. Astrue, 2010 WL 118454, at *1-2 (E.D. Cal. Jan. 7, 2010) 9 || (noting that "[r]educing § 406(b) fees after Crawford is a dicey business"). 10 For these reasons, the court awards plaintiffs counsel the requested amount of \$18,064.70 11 || in attorneys' fees under 42 U.S.C. § 406(b). The court directs that the full amount be paid to 12 | plaintiff's present counsel, who shall then be responsible for reimbursing to plaintiff the 13 || previously-awarded EAJA fees of \$4,811.75.

14 ORDER

15 Accordingly, IT IS HEREBY ORDERED that: 16 1. Plaintiff's counsel's motion for attorney's fees under 42 U.S.C. § 406(b) (ECF No. 26) is 17 GRANTED, and plaintiff is paid the sum of \$18,064.70 from the withheld amounts; and 18 2. Counsel is ordered to reimburse plaintiff \$4,811.75 in previously-awarded EAJA fees. 19 3. Any past-due benefits withheld by the Commissioner in excess of the amount awarded 20 shall be released to Pires after all fee petitions are resolved. 21 | Dated: March 3, 2023 " Aectl Aharon

23 KENDALL J. NE

UNITED STATES MAGISTRATE JUDGE

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