

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

Cliofas Alaniz v. Commissioner of Social Security

Alaniz · No. 1:21-cv-00114-BAM · Decided April 15, 2025

OPINION

(SS) Alaniz 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 CLIOFAS ALANIZ, Case No. 1:21-cv-00114-BAM 12 Plaintiff, ORDER GRANTING
MOTION FOR

AUTHORIZATION OF ATTORNEYS’

13 v. FEES PURSUANT TO 42 U.S.C. § 406(B)

14 COMMISSIONER OF SOCIAL (Doc. 25)

SECURITY,

15 Defendant. 16

17 I. Introduction 18 Michelle Shvarts (“Counsel”), an attorney with Disability Advocates Group,
and counsel 19 for Cliofas Alaniz (“Plaintiff”), filed a motion for authorization of attorneys’ fees
pursuant to 42 20 U.S.C. § 406(b) on March 18, 2025. (Doc. 25.) Following a preliminary review
of the motion, 21 the Court directed Counsel to file a supporting declaration and proof of service
as referenced in 22 the motion. (Doc. 29.) Counsel filed the supporting declaration and proof of
service on April 11, 23 2025. (Doc. 30.) Although served with a copy of the motion by certified
mail on March 18, 24 2025, and notified of the right to object within fourteen days, (see Doc. 25-
2; Doc. 30), Plaintiff 25 did not file a response. On March 24, 2025, Defendant Commissioner of
Social Security filed a 26 response, indicating that the Commissioner “neither supports nor
opposes counsel’s request for 27 attorney’s fees under 42 U.S.C. § 406(b).” (Doc. 28 at 2.) 28
Having considered the motion and record in this case, the Court will grant the motion for 1
authorization of attorneys’ fees in the amount of \$21,539.95, subject to an offset of \$5,072.00 in 2
fees previously awarded pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412.
3 II. Relevant Background 4 Plaintiff, through Counsel, filed this action challenging the denial of
social security 5 benefits on January 27, 2021. (Doc. 1.) On January 6, 2022, the Court issued an
order granting 6 the parties’ stipulation and remanding the action for further proceedings pursuant
to sentence four 7 of 42 U.S.C. § 405(g). (Doc. 21.) Judgment was entered in Plaintiff’s favor.
(Doc. 22.) On

8 February 17, 2022, the Court approved the parties' stipulation to award Plaintiff attorneys' fees of

9 \$5,072.00 pursuant to EAJA. (Doc. 24.) 10 On remand, an administrative law judge issued a favorable decision awarding benefits to 11 Plaintiff. (Doc. 25 at 3.) On January 19, 2025, the Commissioner issued a letter to Counsel 12 indicating that the Social Security Administration withheld \$21,539.95 for Plaintiff's 13 representative's fees, which represented 25 percent of Plaintiff's past-due benefits. (Doc. 25-1.) 14 The Commissioner reportedly calculated total past-due benefits as \$86,159.80. (Doc. 25 at 3.) 15 Counsel now seeks authorization of attorneys' fees in the total amount of \$21,539.95 16 which is 25 percent of Plaintiff's past due benefits. Counsel previously was awarded \$5,072.00 17 in EAJA fees. (Doc. 24.) Counsel intends to refund to Plaintiff the amount awarded in EAJA 18 fees. (Doc. 25 at 5.) Plaintiff agreed to pay Counsel a contingent fee of 25% of any past due 19 benefits obtained for work in federal court. (Doc. 25-2 at 9.) Counsel contends that the requested 20 fee amount is reasonable considering the contingent nature of recovery and the results achieved. 21 As noted, Plaintiff did not file any objection to Counsel's request. 22

II. Legal Standard 23 An attorney may seek an award of fees for representation of a Social Security claimant 24 who is awarded benefits: 25 Whenever a court renders a judgment favorable to a claimant . . . who was represented before the court by an attorney, the court may determine and allow as 26 part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by 27 reason of such judgment 28 42 U.S.C. § 406(b)(1)(A); see also *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002) (explaining 1 section 406(b) controls fees awarded for representation of Social Security claimants in court). A 2 contingency fee agreement is unenforceable if it provides for fees exceeding twenty-five percent 3 of past-due benefits. *Gisbrecht*, supra, 535 U.S. at 807. "[A]n award of section 406(b) fees is 4 offset by an award of attorney fees granted under the EAJA." *Jones v. Comm'r of Soc. Sec.*, No. 5 1:17-cv-00846-SAB, 2021 WL 84401, at *2 (E.D. Cal. Jan. 11, 2021) (citing *Gisbrecht*, 535 U.S. 6 at 796). 7

III. Discussion and Analysis 8 District courts "have been deferential to the terms of contingency fee contracts in § 406(b) 9 cases." *Hearn v. Barnhart*, 262 F. Supp. 2d 1033, 1037 (N.D. Cal. 2003). However, the Court 10 must review contingent-fee arrangements "as an independent check, to assure that they yield 11 reasonable results in particular cases." *Gisbrecht*, 535 U.S. at 807. In doing so, the Court should 12 consider "the character of the representation and the results the representative achieved." *Id.* at 13 808. In addition, the Court should consider whether the attorney performed in a substandard 14 manner or engaged in dilatory conduct or excessive delays, and whether the fees are "excessively 15 large in relation to the benefits received." *Crawford v. Astrue*, 586 F.3d 1142, 1151 (9th Cir. 16 2009) (en banc). 17 In this case, after carefully considering the fee agreement and the applicable law, the 18 Court finds Counsel's requested fees to be reasonable. In support of the motion for authorization 19 of attorneys' fees under 42 U.S.C. § 406(b), Counsel attached the contingent fee agreement which 20 provided for a

contingent fee of 25% of the past-due benefits. (Doc. 25-2 at 9.) Counsel 21 accordingly accepted the risk of loss in the representation. As a result of Plaintiff's counsel's 22 work before the Court, the matter was remanded for further proceedings and the Commissioner 23 ultimately awarded Plaintiff benefits. Counsel provided a copy of the instant motion for 24 authorization of attorneys' fees to Plaintiff. (See Doc. 30.) Although served with the motion, 25 Plaintiff did not timely challenge the requested fees, which attests to their reasonableness. 26 Additionally, there is no indication Plaintiff's counsel performed in a substandard manner 27 or engaged in severe dilatory conduct to the extent that a reduction in fees is warranted. Plaintiff 28 filed an opening brief in this action and was able to secure a remand for further proceedings at the 1 district court level and a subsequent award of past-due benefits. There is no indication that the 2 fees requested are excessively large in relation to the benefits received. Plaintiff's counsel 3 expended a total of 23.8 hours while representing Plaintiff before the district court. (Doc. 25-2 at 4 7 (itemization of attorney time).) The effective hourly rate requested equals \$905.04 per hour. 5 (See also Doc. 28 at 2.) This hourly rate is not excessive when compared to what district courts 6 in the Ninth Circuit have approved in cases involving social security contingency fee 7 arrangements. See *Garcia v. O'Malley*, No. 1:20-cv-01366-SKO, 2024 WL 1118782, at *3 (E.D. 8 Cal. Mar. 14, 2024) (collecting cases and finding effective hourly rate of \$2,307.69 per hour not 9 excessive). 10 Accordingly, the Court finds the fees sought by Counsel are reasonable in light of the 11 results achieved in this action. An award of attorneys' fees pursuant to section 406(b) in the 12 amount of \$21,539.95 is appropriate, but must be offset by any prior award of attorneys' fees 13 granted under the EAJA. *Gisbrecht*, 535 U.S. at 796. As Plaintiff was previously awarded 14 \$5,072.00 in fees pursuant to EAJA, Counsel shall refund the amount of \$5,072.00 to Plaintiff. 15 IV. Conclusion and Order 16 Based upon the foregoing, the Court ORDERS: 17 1. Counsel's motion for authorization of attorneys' fees under 42 U.S.C. § 406(b) 18 (Doc. 25) is GRANTED. 19 2. The Court approves an attorney fee award of \$21,539.95 pursuant to 42 U.S.C. § 20 406(b), subject to an offset of the prior EAJA fee award received by Plaintiff's counsel. 21 3. Plaintiff's counsel is ordered to refund the amount of \$5,072.00 to Plaintiff as an 22 offset for fees previously awarded and received pursuant to the EAJA. 23 IT IS SO ORDERED. 24 25 Dated: April 15, 2025 /s/ Barbara A. McAuliffe _
UNITED STATES MAGISTRATE JUDGE
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