

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Werts v. Saul

Werts · No. 5:20-cv-03751-EJD · Decided April 21, 2025

SUMMARY

The United States District Court for the Northern District of California granted Plaintiff Sarah Werts’s motion for attorney’s fees under 42 U.S.C. § 406(b) following a successful remand and award of Social Security disability benefits. The court approved \$44,183.44 in fees, representing approximately 16% of past-due benefits, and ordered counsel to refund \$4,183.44 received under the Equal Access to Justice Act.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Edward J. Davila
JURISDICTION	United States District Court for the Northern District of California
DECIDED	April 21, 2025
DOCKET	5:20-cv-03751-EJD
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved under 42 U.S.C. § 406(b) for approval of attorney's fees after prevailing in a Social Security disability action and obtaining a remand that resulted in an award of past-due benefits.
STANDARD OF REVIEW	Independent judicial review of the reasonableness of a contingent-fee arrangement under 42 U.S.C. § 406(b), considering the character of the representation and the results achieved.
PRECEDENTIAL VALUE	unpublished, nonprecedential district court order
PARTIES	Sarah Werts v. Andrew Saul

TOPICS

- attorney fees
- judicial review of agency action
- administrative law
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the requested \$44,183.44 attorney's fee under 42 U.S.C. § 406(b) was reasonable and should be approved.
2. Whether counsel was required to refund to Plaintiff the smaller fee previously received under the Equal Access to Justice Act.

HOLDINGS

1. A court may approve a contingent fee under 42 U.S.C. § 406(b) when the fee does not exceed the statutory 25% limit and is reasonable in light of the character of the representation, the results achieved, the absence of substandard or dilatory conduct, and the effective hourly rate. The requested \$44,183.44 fee was reasonable and was approved.
2. When an attorney receives fees under both the EAJA and § 406(b), the attorney must refund to the claimant the amount of the smaller fee.

KEY QUOTATIONS

“calls for court review of such arrangements as an independent check, to assure that they yield reasonable results in particular cases.” (at 1)

“the character of the representation and the results the representative achieved.” (at 1)

“a lodestar analysis should be used only as an aid (and not a baseline) in assessing the reasonableness of the fee.” (at 1)

“refund to the claimant the amount of the smaller fee.” (at 1)

FACTUAL BACKGROUND

Plaintiff's counsel represented her in a Social Security disability action under a contingency-fee agreement providing for a maximum fee of 25% of past-due benefits for work performed under § 406(a) and (b). After the court remanded the matter, an Administrative Law Judge found Plaintiff disabled and awarded \$276,216 in retroactive Disability Insurance Benefits. Counsel requested \$44,183.44 under § 406(b), approximately 16% of the past-due benefits, for 26.5 claimed hours of work, and agreed to refund \$4,183.44 received under the EAJA.

PROCEDURAL HISTORY

On March 3, 2023, the court reversed the Commissioner's unfavorable final decision and remanded for further administrative hearings. On April 24, 2024, an Administrative Law Judge found Plaintiff disabled and awarded Disability Insurance Benefits, including \$276,216 in retroactive benefits. Plaintiff then moved for \$44,183.44 in attorney's fees under § 406(b); the court granted the motion and ordered counsel to refund \$4,183.44 previously received under the EAJA.

DISPOSITION

other

CASES CITED

- *Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002)
- *Crawford v. Astrue*, 586 F.3d 1142, 1151 (9th Cir. 2009)
- *Laboy v. Colvin*, 631 F. App'x 468, 469 (9th Cir. 2016)
- *L.M. v. Kijakazi*, No. 17-CV-03562-JCS, 2023 WL 7251505, at *3 (N.D. Cal. Nov. 2, 2023)
- *Jacomet v. Kijakazi*, No. 2:18-CV-0199 DB, 2023 WL 5723085, at *2 (E.D. Cal. Sept. 5, 2023)
- *Spina v. Kijakazi*, No. 19-CV-05171-BLF, 2023 WL 3977666, at *1 (N.D. Cal. June 13, 2023)

OPINION

Werts v. Saul

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 SAN JOSE DIVISION

7 8 SARAH WERTS, Case No. 5:20-cv-03751-EJD 9 Plaintiff, ORDER GRANTING MOTION
FOR

ATTORNEY'S FEES

10 v. 11 ANDREW SAUL, Re: Dkt. No. 27 Defendant. 12 13 Before the Court is Plaintiff's
motion for attorney's fees pursuant to 42 U.S.C. § 406(b). 14 Mot., ECF No. 27. Plaintiff's
counsel Harvey P. Sackett seeks an award of \$44,183.44 as a 15 percentage of the past-due
disability benefits owed to Plaintiff under Title II of the Social Security 16 Act. Defendant, the
acting Social Security Commissioner, has submitted a response but takes no 17 position as to the
reasonableness of the requested fees. Response, ECF No. 28. 18 Having reviewed the moving
papers, Mr. Sackett's time entries, and Defendant's response, 19 the Court GRANTS Plaintiff's
motion.

20 I. BACKGROUND

21 On March 3, 2023, the Court reversed the Commissioner's unfavorable final decision and 22
ordered the matter be remanded for further administrative hearings. Following remand, on April
23 24, 2024, an Administrative Law Judge found Plaintiff disabled and entitled to a period of 24
disability and Disability Insurance Benefits ("DIB"). Plaintiff received a gross total of 25
\$276,216.00 in retroactive DIB for the period of July 2016 through July 2024. The Social 26
Security Administration withheld \$69,054.00 for prospective payment of attorney's fees, which is
27 25% of the retroactive DIB. 1 Prior to filing the complaint in this action, Plaintiff had entered
into a contingency fee 2 agreement with Mr. Sackett on April 3, 2017. Per the agreement, Mr.

Sackett was to receive a 3 total maximum of 25% of the past-due benefits awarded to Plaintiff for work performed under § 4 406(a) and (b). Under § 406(b), Mr. Sackett is now asking for a fee of \$44,183.44. Following the 5 Court's approval, Mr. Sackett will reimburse Plaintiff \$4,183.44 for fees under the Equal Access 6 to Justice Act ("EAJA"); the net fee will be \$40,000.

7 II. LEGAL STANDARD

8 Under the Social Security Act, an attorney who successfully represents a claimant before a 9 court may seek an award of attorney's fees not to exceed 25% of any past-due benefits eventually 10 awarded. 42 U.S.C. § 406(b). While contingency fee agreements are permissible in Social 11 Security cases, § 406(b) "calls for court review of such arrangements as an independent check, to 12 assure that they yield reasonable results in particular cases." *Gisbrecht v. Barnhart*, 535 U.S. 789, 13 807 (2002). In deciding whether a fee agreement is reasonable, courts must consider "the 14 character of the representation and the results the representative achieved." *Crawford v. Astrue*, 15 586 F.3d 1142, 1151 (9th Cir. 2009). The court "first look[s] to the fee agreement and then 16 adjust[s] downward if the attorney provided substandard representation or delayed the case, or if 17 the requested fee would result in a windfall." *Id.* While a court may consider an attorney's 18 lodestar in deciding whether an award of fees under § 406(b) is reasonable, "a lodestar analysis 19 should be used only as an aid (and not a baseline) in assessing the reasonableness of the fee." 20 *Laboy v. Colvin*, 631 F. App'x 468, 469 (9th Cir. 2016). 21 Where a claimant's attorney has been awarded fees under both the EAJA and § 406(b), the 22 attorney must "refund to the claimant the amount of the smaller fee." *Crawford*, 586 F.3d at 1144 23 n.3 (quoting *Gisbrecht*, 535 U.S. at 796).

24 III. DISCUSSION

25 The Court finds that Mr. Sackett's requested fees are reasonable for the services he has 26 rendered. Mr. Sackett requests \$44,183.44 in fees under § 406(b), which is approximately 16% of 27 Plaintiff's past-due benefits of \$276,216.00. The requested fee is below the 25% statutory limit 1 set by § 406(b), and nothing in the record or submitted time records suggests that his performance 2 || was substandard or that he engaged in dilatory conduct to increase the amount of fees he would be 3 awarded. The requested fee also reflects a reasonable hourly rate. Mr. Sackett indicates that he 4 || spent 26.5 hours on this case, which includes drafting the complaint, reviewing the SSA 5 administrative record, and drafting the motion for summary judgment. An award of \$44,183.44 6 || for 26.5 hours of work would yield an effective hourly rate of \$1,667.30 per hour, which is within 7 || the range for effective hourly fees for counsel with Mr. Sackett's experience that courts in this 8 district have awarded under § 406(b). See, e.g., *L.M. v. Kijakazi*, No. 17-CV-03562-JCS, 2023 9 WL 7251505, at *3 (N.D. Cal. Nov. 2, 2023) (finding effective hourly rate of \$2,145 reasonable); 10 || *Jacomet v. Kijakazi*, No. 2:18-CV-0199 DB, 2023 WL 5723085, at *2 (E.D. Cal. Sept. 5, 2023) 11 (finding effective hourly rate of \$2,005.06, while "certainly on the high end," not unreasonable); a 12 || *Spina v. Kijakazi*, No. 19-CV-05171-BLF, 2023 WL 3977666, at *1 (N.D. Cal. June 13, 2023) 13 (approving a fee award with an effective

hourly rate of \$2,344.56).

14 || IV. CONCLUSION

15 Based on the foregoing, the Court GRANTS Mr. Sackett's motion. Mr. Sackett is a 16 awarded \$44,183.44 pursuant to 42 U.S.C. § 406(b). Upon receipt of this fee, Mr. Sackett is = 17 ORDERED to refund to Plaintiff the fees he received under EAJA, in the amount of \$4,183.44. 18 IT IS SO ORDERED. 19 || Dated: April 21, 2025 20 21 aD.

EDWARD J. DAVILA

United States District Judge 23 24 25 26 |) ee The Court notes that the timesheet in Exhibit E totals 23.15 hours, rather than the 26.5 hours 27 counsel claims in the motion. Regardless, even with 23.15 hours, the hourly rate would be \$1,904.25, which is still within the range for reasonable contingency fees in this district. 28 || Case No.: 5:20-cv-03751-EJD

ORDER GRANTING MOTION FOR ATTORNEY'S FEES