

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Werts v. Saul

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

OPINION

Werts v. Saul

PER CURIAM.

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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