

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

Jashae L. Branch v. Frank Bisignano

Branch · No. 3:21-cv-00785-KSC · Decided November 20, 2025

OPINION

Branch

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 JASHAE L. BRANCH, Case No.: 3:21-cv-00785-KSC 12 Plaintiff,

ORDER GRANTING MOTION FOR

13 v. ATTORNEY FEES PURSUANT TO

42 U.S.C. § 406(B) [Dkt. No. 25]

14 FRANK BISIGNANO,

Commissioner of Social Security,¹ 15 Defendant. 16 17 18 19 Presently before the Court is plaintiff Jashae L. Branch's Motion for Attorney's Fees 20 Pursuant to 42 U.S.C. § 406(b) ("Motion"). See Dkt. No. 25. Defendant, the Commissioner 21 of Social Security, filed a response neither supporting nor opposing the request for fees. 22 See Dkt. No. 28. Lawrence D. Rohlfing, plaintiff's counsel ("Counsel"), notified plaintiff 23 that he could object to the amount of fees requested [Dkt. No. 25 at 2]; however, plaintiff 24 lodged no objections. The Court finds plaintiff's Motion suitable for determination on the 25 26 27 1 Frank Bisignano became the acting Commissioner of Social Security on May 6, 2025. The Court substitutes Frank Bisignano as the defendant in this matter. See Fed. R. 28 1 papers submitted and without oral argument. See Dkt. No. 24 at 2; Fed. R. Civ. P. 78(b); 2 CivLR 7.1(d)(1). For the following reasons, the Court GRANTS plaintiff's Motion.

3 I. BACKGROUND

4 Plaintiff filed an application for a period of disability, disability insurance benefits, 5 and supplemental security income benefits on January 23, 2018, alleging disability 6 commencing on May 22, 2017. Dkt. No. 1 at 2. The Commissioner denied the applications 7 initially and upon reconsideration. Id. In a hearing before an administrative law judge 8 ("ALJ"), the ALJ denied plaintiff's claim for benefits on September 10, 2020. Id. 9 To challenge the Commissioner's decision, plaintiff retained counsel and entered 10 into a Social Security Representation Agreement ("Contingency Fee Agreement") on 11 October 27, 2020. Dkt. No. 25-1. Under the Contingency Fee Agreement, Counsel is

12 entitled up to “25% of the past-due benefits awarded [to plaintiff] upon reversal of any 13 unfavorable ALJ decision.” Id. 14 Plaintiff sought judicial review in this Court on April 21, 2021. See Dkt. No. 1. On

15 June 9, 2022, this Court reversed the final decision of the Commissioner and remanded the 16 case to the Social Security Administration for further administrative proceedings. See Dkt. 17 No. 21. This Court further directed the Clerk of the Court to enter final judgment in favor 18 of plaintiff and against defendant. Id. 19 On July 29, 2022, the parties filed their Joint Motion for the Award and Payment of 20 Attorney’s Fees and Expenses Pursuant to the Equal Access to Justice Act, 28 U.S.C. 21 § 2412(d) and Costs Pursuant to 28 U.S.C. § 1920. See Dkt. No. 23. This Court granted the 22 Joint Motion and awarded plaintiff \$3,225.00. See Dkt. No. 24. 23 On remand, the Commissioner granted plaintiff’s application for benefits, entitling 24 plaintiff to receive approximately \$101,801.00 in past-due benefits on October 7, 2023. 25 See Dkt. Nos. 25-2; 25-3. Additionally, the Notice of Award provided that \$25,450.25 of 26 the past-due benefits would be withheld to pay plaintiff’s attorney. Id. 27 Counsel requests for an award of attorney’s fees in the amount of \$24,450.00, with 28 a credit to plaintiff for \$3,225.00 in attorney’s fees previously paid out under the Equal 1 Access to Justice Act (“EAJA”). See Dkt. No. 25 at 1. The Commissioner filed a response 2 which neither supported nor opposed the request for fees. Dkt. No. 28 at 2. Counsel 3 provided notice to plaintiff that he could object to the amount of fees requested; however, 4 plaintiff lodged no objections. Dkt. No. 25 at 2.

5 II. LEGAL STANDARD

6 Because this Court entered a judgment awarding plaintiff past-due benefits, the 7 relevant fee provision is 42 U.S.C. § 406(b). Under § 406(b), the court may “allow” 8 reasonable attorney’s fees “not in excess of 25 percent” of any past-due benefits awarded 9 to a claimant. See 42 U.S.C. § 405(b)(1)(A); *Crawford v. Astrue*, 586 F.3d 1142, 1147 (9th 10 Cir. 2009) (en banc). “In contrast to fees awarded under fee-shifting provisions such as 11 42 U.S.C. § 1988, the fee is paid by the claimant out of the past-due benefits awarded; the 12 losing party is not responsible for payment.” *Crawford*, 586 F.3d at 1147 (citing *Gisbrecht* 13 v. *Barnhart*, 535 U.S. 789, 802 (2002)). 14 A court reviewing a request for attorney’s fees must first look at the fee agreement 15 between the social security claimant and counsel, then test the fee for reasonableness. See 16 *Gisbrecht*, 535 U.S. at 808; see also *Crawford*, 586 F.3d at 1148. “A fee resulting from a 17 contingent-fee agreement is unreasonable and thus, subject to reduction by the court, if the 18 attorney provided substandard representation or engaged in dilatory conduct in order to 19 increase the accrued amount of past-due benefits....” *Crawford*, 586 F.3d at 1148 (quoting 20 *Gisbrecht*, 535 U.S. at 808). Moreover, where counsel is set to receive a windfall because 21 “the benefits are large in comparison to the amount of time counsel spent on the case, a 22 downward adjustment is similarly in order.” See *Gisbrecht*, 535 U.S. at 808. To support 23 reasonableness of the resulting fee “the court may require counsel to submit a record of 24 hours spent and a statement of normal hourly billing charges.” *Crawford*, 586 F.3d at 1151. 25 However,

“satellite litigation over attorney’s fees should not be encouraged.” *Id.* at 1152 26 (quoting *Gisbrecht*, 535 U.S. at 808). Finally, although the court’s focus is on the 27 reasonableness of the contingency agreement, the court can “consider the lodestar 28 calculation but, only as an aid in assessing the reasonableness of the fee.” *Id.* 1 A district court may award fees under § 406(b) to an attorney who previously 2 received fees under the EAJA. However, in order to “maximize the award of past-due 3 benefits to claimants and to avoid giving double compensation to attorneys,” a lawyer is 4 “required to offset any fees received under § 406(b) with any award that the attorney 5 receives under § 2412 if the two were for the ‘same work.’” *Parrish v. Comm’r of Soc. Sec. Admin.*, 698 F.3d 1215, 1218 (9th Cir. 2012) (quoting *Gisbrecht*, 535 U.S. at 796).

7 III. ANALYSIS

8 Following this Court’s remand, an ALJ issued a decision awarding past-due benefits. 9 Pursuant to 42 U.S.C. § 406(b), the Court will assess: (1) whether the attorney’s fees 10 requested by plaintiff’s counsel are reasonable under § 406(b); and, (2) whether plaintiff’s 11 counsel must remit any fees previously awarded under the EAJA. 12 a. The Requested Fees Are Reasonable and Do Not Require a Downward 13 Adjustment 14 Counsel requests an award of attorney’s fees in the amount of \$24,450.00, 15 representing approximately 24.02% of the past-due benefits. See *Dkt. Nos.* 25 at 3; 25-2; 16 25-3. The Court will first examine whether the Contingency Fee Agreement itself is 17 reasonable and will then evaluate the reasonableness of the requested fees under the 18 applicable factors in *Crawford*. 586 F.3d at 1146-53. If the Court determines that the fee is 19 unreasonable, it will reduce the award accordingly. 20 First, the Court concludes that the Contingency Fee Agreement is reasonable. 21 Plaintiff and Counsel entered into the Contingency Fee Agreement under which plaintiff 22 would pay Counsel up to twenty-five percent (25%) of any past-due benefits awarded after 23 a favorable decision. See *Doc* 25-1. Counsel entered this agreement despite the risk of 24 receiving no recovery if he did not achieve a favorable outcome. There is no evidence of 25 “fraud or overreaching” in the negotiation of the Contingency Fee Agreement. See 26 *Crawford*, 586 F.3d at 1145. Further, the Contingency Fee Agreement comports with 27 standard contingency fee agreements commonly employed in social security cases. *Sinha* 28 v. *Bisignano*, No. 23-CV-00363-BAS-BGS, 2025 WL 1616796, at *3 (S.D. Cal. June 6, 1 2025). Moreover, Counsel gave plaintiff the opportunity to oppose the Motion for 2 Attorney’s Fees and plaintiff did not do so. *Id.* Thus, the Court concludes the fee agreement 3 between plaintiff and Counsel is reasonable and statutorily permissible under 42 U.S.C. § 4 405(b) because it does not exceed twenty-five percent (25%) of the past-due benefits 5 awarded. See *Crawford*, 586 F.3d at 1147. 6 The Court also concludes that the requested fees are reasonable. There is no evidence 7 of substandard representation herein as underscored by plaintiff’s success before this Court 8 and the Social Security Administration on remand. Similarly, the Court does not find any 9 support in the record to suggest Counsel needlessly prolonged the administrative 10 proceedings to increase past-due benefits and increase his fee. Thus, the first two factors 11 identified in *Crawford* do not support a fee reduction. See *Sinha*, 2025 WL 1616796, at *3 12

(citing Crawford, 586 F.3d at 1146). 13 Counsel provided his time records demonstrating that he spent 16.7 hours on 14 plaintiff's case at the District Court level. Dkt. Nos. 25 at 3; 25-4. The requested fees of 15 \$24,450.00 amount to an hourly rate of \$1,437.00. Id. at 5. Although an hourly rate of 16 \$1,437.00 is high, Gisbrecht and Crawford make clear that the lodestar analysis does not 17 control the evaluation under § 406(b). See Sinha, 2025 WL 1616796, at *3 (finding that 18 the consideration of the hourly rate was not helpful in determining whether the fee 19 constitutes a windfall nor did the court wish to penalize counsel for achieving a favorable 20 result efficiently); see also Sproul v. Astrue, No. 11-CV-1000-IEG DHB, 2013 WL 21 394056, at *2 (S.D. Cal. Jan. 30, 2013) (basing a reasonableness determination on an 22 hourly rate basis alone is inappropriate when an attorney is working pursuant to a 23 reasonable contingency contract that runs a substantial risk of loss). 24 Further, the hourly rate of \$1,437 still falls within the general range of fees found 25 reasonable in other similar cases. See, e.g., Roland S. v. Kijakazi, No. 3:20-CV-01068- 26 AHG, 2023 WL 6966153, at *3 (S.D. Cal. Oct. 20, 2023)(approving a de facto hourly rate 27 of \$1,438.35); see also Desiree D. v. Saul, No. 3:19-CV-01522-RBM, 2021 WL 1564331, 28 at *3 (S.D. Cal. Apr. 20, 2021)(approving a de facto hourly rate of \$1,494.34); see also 1 Martinez v. Saul, No. 15-CV-1994-BTM-BGS, 2019 WL 3322481, at *2 (S.D. Cal. July 2 24, 2019)(approving a de facto hourly rate of \$1,488.83). 3 Finally, the requested fees do not constitute a windfall and therefore do not require 4 a downward adjustment. Gisbrecht, 535 U.S. at 808. Although Counsel is authorized to 5 seek twenty-five percent (25%) of plaintiff's past-due benefits under the Contingency Fee 6 Agreement, Counsel voluntarily reduced the fee by \$1,000.00 amounting to twenty-four 7 percent (24%) of the past-due benefits. While this voluntary reduction may not be as 8 substantial as that in Crawford, where the court looked at three separate cases, each 9 reducing their fees within the range of thirteen to sixteen percent (13%-16%), Counsel's 10 discretionary reduction nonetheless demonstrates good faith and provides additional 11 support for the reasonableness of the requested fee. See Crawford, 586 F.3d at 1151-52 12 (considering that counsel had voluntarily reduced the fees from the allowable twenty-five 13 percent (25%) in analyzing whether the attorney enjoyed a "windfall"); see also Grant v. 14 O'Malley, No. 8:22-CV-00314-MAA, 2024 WL 6885457, at *4 (C.D. Cal. Mar. 13, 15 2024)(finding a reduction of \$700.50, which amounted to approximately twenty-three 16 point eight percent (23.8%) of total past-due benefits, did not result in a windfall); Leslie 17 Ann A. v. Kijakazi, No. CV 21-02727-RAO, 2022 WL 16787825, at *2 (C.D. Cal. Nov. 7, 18 2022) (considering a voluntary reduction of \$1,301.78, approximately twenty-two percent 19 (22%) of total past-due benefits, in analyzing whether the requested fees were reasonable). 20 Therefore, the Court considers that Counsel's election to seek less than the contractually 21 authorized maximum, though modest, supports a finding that the fee is "not excessively 22 large in relation to the benefits achieved" and therefore does not constitute a 23 windfall. See Crawford, 586 F.3d at 1151. 24 In sum, the Court finds that the requested fees are reasonable. Plaintiff agreed to a 25 contingency fee of up to twenty-five percent (25%) of past-due benefits with Counsel 26 bearing

the risk of non-payment if the appeal proved unsuccessful. The record contains no 27 evidence of substandard representation or dilatory conduct aimed at increasing the accrued 28 amount of past-due benefits. Rather, Counsel efficiently secured a favorable award for | || plaintiff and is therefore entitled to the maximum allowable fee amount, yielding an hourly 2 ||rate within the range found reasonable in comparable cases. Accordingly, no downward 3 adjustment is warranted, and the Court will grant the Motion for Attorney's Fees in the 4 ||amount of \$24,450.00. 5 b. The Court Orders Counsel to Remit \$3,225.00 to Plaintiff 6 In awarding fees under § 406(b), the Court acknowledges plaintiff's previous EAJA 7 || award of \$3,225.00. Dkt. No. 24. Here, Counsel will receive fees under both the EAJA and 8 ||§ 406(b) for the same work performed before this Court. Therefore, the Court orders 9 || Counsel to remit \$3,225.00 to plaintiff for the EAJA fees already awarded.

10 IV. CONCLUSION

1] For the foregoing reasons, the Motion for Attorney's Fees is GRANTED under 12 ||42 U.S.C. § 406(b). Dkt. No. 25. The Commissioner is directed to remit \$24,450.00 directly 13 ||to Counsel. The Court further ORDERS Counsel to reimburse plaintiff in the amount of 14 \$3,225.00.

15 IT IS SO ORDERED

16 ||Dated: November 19, 2025 17 Lo AE 18 lice 19 Hort. Karen 8. Crawford 30 United States Magistrate Judge 21 22 23 24 25 26 27 28