

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Macquarrie v. Commissioner of Social Security

Macquarrie · No. 1:21-cv-00072-CDB · Decided April 10, 2025

SUMMARY

The United States District Court for the Eastern District of California granted Plaintiff’s counsel’s unopposed motion for attorney’s fees under 42 U.S.C. § 406(b). The court awarded \$19,000.46, representing 25% of Plaintiff’s past-due Social Security benefits, and found the fee reasonable based on counsel’s performance, the successful result, and 24.1 hours of work. Counsel was ordered to reimburse Plaintiff the previously awarded \$5,000 EAJA fee.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Christopher D. Baker
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 10, 2025
DOCKET	1:21-cv-00072-CDB
DISPOSITION	other
PROCEDURAL POSTURE	After granting Plaintiff's motion for summary judgment and remanding the Social Security action under sentence four of 42 U.S.C. § 405(g), the court considered Plaintiff's counsel's unopposed motion for attorney's fees under 42 U.S.C. § 406(b).
STANDARD OF REVIEW	The court independently reviewed the requested § 406(b) fee for reasonableness, considering the character of the representation and results achieved, whether counsel caused delay, and whether the fee was reasonable in light of the time spent litigating.
PRECEDENTIAL VALUE	Unpublished district court order; precedential status unknown
PARTIES	Melissa Lee Macquarrie v. Commissioner of Social Security

TOPICS

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

PRACTICE AREAS

Social Security

administrative law

attorney's fees

QUESTIONS PRESENTED

1. Whether counsel's requested fee of \$19,000.46 under 42 U.S.C. § 406(b), equal to 25 percent of Plaintiff's past-due benefits, was reasonable.
2. Whether the § 406(b) award had to be offset by the previously awarded EAJA fees.

HOLDINGS

1. The requested \$19,000.46 fee was reasonable and did not constitute a windfall because counsel achieved a successful result, did not cause delay, and reasonably spent 24.1 hours litigating the case.
2. The § 406(b) award must be offset by the \$5,000 previously awarded under the Equal Access to Justice Act, and counsel must reimburse that amount to Plaintiff after receiving the § 406(b) fees.

KEY QUOTATIONS

"the 25% statutory maximum fee is not an automatic entitlement, and the court must ensure that the fee requested is reasonable." (at 2)

FACTUAL BACKGROUND

Plaintiff and counsel entered into a contingency-fee agreement providing for fees of 25 percent of any past-due benefits awarded, together with reimbursement of reasonable out-of-pocket expenses. Counsel spent 24.1 hours reviewing the 1,088-page administrative record and preparing a summary-judgment motion and reply, and Plaintiff obtained a favorable result after remand. The Social Security Administration awarded \$76,001.86 in past-due benefits and withheld \$19,000.46, representing 25 percent, for counsel's fees; counsel had previously received \$5,000 in EAJA fees.

PROCEDURAL HISTORY

Plaintiff filed an action challenging the denial of Social Security benefits. The court granted Plaintiff's motion for summary judgment on November 28, 2023, remanded the case under sentence four of § 405(g), and entered judgment in Plaintiff's favor. On remand, an administrative law judge awarded benefits, and counsel sought \$19,000.46 under § 406(b), representing 25 percent of Plaintiff's past-due benefits; the court granted the request subject to an offset for previously awarded EAJA fees.

DISPOSITION

other

CASES CITED

- *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002)
- *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002)

- *Gisbrecht v. Barnhart*, 535 U.S. 789, 798 n.6 (2002)
- *Gisbrecht v. Barnhart*, 535 U.S. 789, 808 (2002)
- *Crawford v. Astrue*, 586 F.3d 1142, 1149 (9th Cir. 2009)
- *Crawford v. Astrue*, 586 F.3d 1142, 1153 (9th Cir. 2009) (Clifton, J., concurring in part and dissenting in part)
- *Smith v. Kijakazi*, No. 1:13-cv-01717-BAK-SKO, 2022 WL 1471035, at *2 (E.D. Cal. May 10, 2022)
- *Soriano v. Saul*, 831 F. App'x 844, 844-45 (9th Cir. 2020)
- *Coles v. Berryhill*, No. EDCV 14-1488-KK, 2018 WL 3104502, at *3 (C.D. Cal. June 21, 2018)
- *Garcia v. O'Malley*, No. 1:20-cv-01366-SKO, 2024 WL 1118782, at *3 (E.D. Cal. Mar. 14, 2024)
- *Aguilera v. Commissioner of Social Security*, No. 1:21-cv-00819-GSA, 2024 WL 3937517, at *2 (E.D. Cal. Aug. 23, 2024)
- *Jamieson v. Astrue*, No. 1:09-cv-00490-LJO-DLB, 2011 WL 587096, at *2 (E.D. Cal. Feb. 9, 2011)
- *Thomas v. Colvin*, No. 1:11-cv-01291-SKO, 2015 WL 1529331, at *3 (E.D. Cal. Apr. 3, 2015)

OPINION

(SS) *Macquarrie v. Commissioner of Social Security*

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 MELISSA LEE MACQUARRIE, Case No. 1:21-cv-00072-CDB 12 Plaintiff, ORDER
GRANTING PLAINTIFF'S
COUNSEL'S UNOPPOSED MOTION

13

v. FOR ATTORNEY'S FEES UNDER

14 42 U.S.C. §406(b)

COMMISSIONER OF SOCIAL

15 SECURITY, (Doc. 31) 16 Defendant. 17 18 Pending before the Court is the motion of Jonathan Omar Peña ("Counsel"), counsel for 19 Plaintiff Melissa Lee Macquarrie ("Plaintiff"), for an award of attorney's fees pursuant to 42 20 U.S.C. § 406(b), filed on March 26, 2025. (Doc. 31). The motion seeks attorney's fees in the 21 amount of \$19,000.46 for representing Plaintiff in federal court. (Id. at 1). Plaintiff and 22 Defendant do not oppose the motion. See (Doc. 33) (Defendant's statement of non-opposition). 23 For the reasons set forth below, Counsel's motion for attorney's fees will be granted. 1 24 I. Relevant Background 25 On December 31, 2020, Plaintiff and Counsel entered into a contingency fee agreement. 26 (Doc. 31-3); (Doc. 31 ¶ 7). The parties agreed to attorney's fees in the amount of 25% of the 27 1 Both parties consented to the jurisdiction of a magistrate judge for all proceedings in this 1 past-due benefits that were awarded to Plaintiff in the event she prevailed in her case. (Doc. 31-3 2 at 1). The agreement also provided that Plaintiff would pay her attorney's reasonable out-of- 3 pocket expenses that were incurred in

the representation. (Id.). Further, the agreement provided 4 that Counsel could seek fees pursuant to the Equal Access to Justice Act (“EAJA”), with the 5 smaller fees of that award to be refunded in the event of an award of past-due benefits. (Id.). 6 Plaintiff filed a complaint to this Court on January 18, 2021, appealing the Commissioner 7 of Social Security’s (“Commissioner” or “Defendant”) decision denying her application for 8 benefits. (Doc. 1). Plaintiff filed a motion for summary judgment on October 26, 2021. (Doc. 9 15). On April 11, 2022, Defendant filed an opposition, and Plaintiff filed a reply on April 26, 10 2022. (Docs. 21, 22). On November 28, 2023, the Court granted Plaintiff’s motion for summary 11 judgment, remanded this action pursuant to sentence four of 42 U.S.C. § 405(g), and entered 12 judgment in favor of Plaintiff. (Docs. 25-26). 13 On February 28, 2024, Plaintiff filed an unopposed motion for attorney’s fees pursuant to 14 the EAJA. (Doc. 27). On March 4, 2024, the Court denied the unopposed motion for attorney’s 15 fees as moot in granting the parties’ stipulated request for award and payment of attorney’s fees 16 pursuant to the EAJA and Counsel was awarded EAJA fees in the amount of \$5,000. (Doc. 30). 17 Following remand, an administrative hearing was held and the presiding Administrative Law 18 Judge (“ALJ”) issued a favorable decision awarding benefits to Plaintiff. (Doc. 31 at 3). The 19 Social Security Administration (the “Agency”) sent Plaintiff a Notice of Award dated March 20, 20 2025. (Id.); see (Doc. 31-1). The Notice of Award confirmed that \$19,000.46 was withheld as 21 25% of past-due benefits for payment for her Counsel, and that the total past-due benefits was 22 \$76,001.86. (Id.). 23 On March 26, 2025, Counsel filed the instant motion for attorney’s fees pursuant to 42 24 U.S.C. § 406(b) seeking an award of \$19,000.46 in attorney’s fees, representing 25% of 25 Plaintiff’s past-due benefits. (Doc. 31 at 3). That same day, Counsel filed a proof of service that 26 the instant motion was served on Plaintiff by U.S. mail. (Doc. 32). Defendant filed a statement 27 of non-opposition stating it “neither supports nor opposes Counsel’s request for attorney’s fees 1 under 42 U.S.C. § 406(b).” (Doc. 33 at 2). Plaintiff did not file an opposition or statement of 2 non-opposition to Counsel’s motion and the time to do so has passed. 3 II. Legal Standard 4 An attorney may seek an award of fees for representation of a Social Security claimant 5 who is awarded benefits: 6 Whenever a court renders a judgment favorable to a claimant under [42 U.S.C. § 401, et seq] who was represented before the court by an attorney, the court may 7 determine and allow as part of its judgment a reasonable fee for such 8 representation not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment... 9 10 42 U.S.C. § 406(b)(1)(A); see *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002) (Section 406(b) 11 controls fees awarded for representation of Social Security claimants). The Commissioner 12 typically does not act as an adversary, but “plays a part in the fee determination resembling that 13 of a trustee for the claimants.” *Gisbrecht*, 535 U.S. at 798 n.6 (2002). Thus, “[b]ecause the 14 [Commissioner] has no direct interest in how much of the award goes to a counsel and how much 15 to the disabled person, the district court has an affirmative duty to assure that the reasonableness 16 of the fee is established.” *Crawford v. Astrue*, 586 F.3d 1142, 1149 (9th Cir. 2009); see 17 *Gisbrecht*, 535 U.S. at 808-08 (the 25%

statutory maximum fee is not an automatic entitlement, 18 and the court must ensure that the fee requested is reasonable). In determining whether the 19 requested fee is reasonable, the court considers (1) the character of the representation and the 20 results achieved by the representative, (2) whether the attorney is responsible for delay in 21 effectuating benefits, and (3) whether the requested fee is reasonable in light of the amount of 22 time the attorney spent in litigating the case. *Gisbrecht*, 535 U.S. at 808; *Crawford*, 586 F.3d at 23 1149. 24 III. Discussion 25 Counsel for Plaintiff's motion for attorney's fees is reasonable. Counsel is an experienced 26 attorney who secured a successful result for Plaintiff in this action. See (Docs. 25-26, 30). There 27 is no indication that a reduction of fees is warranted due to any substandard performance by Counsel. There is also no evidence that Counsel engaged in any dilatory conduct resulting in 1 excessive delay. Indeed, Counsel's itemized bill reflects 24.1 hours of time to review the 1088- 2 page administrative record and drafting a motion for summary judgment and reply raising a single 3 issue for review. (Docs. 11, 15, 22, 31-4). The Court finds 24.1 hours is a reasonable amount of 4 time for the performance of those tasks. 5 The Court also finds that the total amount sought does not appear to be disproportionate to 6 the amount of time Plaintiff's counsel spent on the case. Counsel for Plaintiff requests an hourly 7 rate of \$788.40 (\$19,000.46 / 24.1 hours). The amount requested cannot be said to amount to be a 8 windfall. See *Crawford*, 586 F.3d at 1153 (J. Clifton, concurring in part and dissenting in part) 9 (noting that the majority opinion found reasonable effective hourly rates equaling \$519, \$875, 10 \$902); see also *Smith v. Kijakazi*, No. 1:13-cv-01717-BAK-SKO, 2022 WL 1471035, at *2 (E.D. 11 Cal. May 10, 2022) (collecting cases finding that similar amounts in attorney's fees requested 12 were appropriate); cf. *Soriano v. Saul*, 831 Fed. Appx. 844, 844-45 (9th Cir. 2020) (holding the 13 district court had discretion to determine that a fee award of \$20,000 for 17.7 hours of work, an 14 hourly rate of \$1,129.94, did amount to a windfall); *Coles v. Berryhill*, No. EDCV 14-1488-KK, 15 2018 WL 3104502, at *3 (C.D. Cal. Jun. 21, 2018) (hourly rate of \$1,431.94); *Garcia v. 16 O'Malley*, No. 1:20-cv-01366-SKO, 2024 WL 1118782, at *3 (E.D. Cal. Mar. 14, 2024) 17 (collecting cases and finding effective hourly rate of \$2,307.69 per hour not excessive); see also 18 (Doc. 31 at 5-6) (citing cases providing an hourly rate over \$1,000 per hour). 19 Similarly, the \$19,000.46 total amount is consistent with contingent fee awards granted 20 under § 406(b). See, e.g., *Aguilera v. Comm'r of Soc. Sec.*, No. 1:21-cv-00819-GSA, 2024 WL 21 3937517, at *2 (E.D. Cal. Aug. 23, 2024); *Jamieson v. Astrue*, No. 1:09-cv-00490-LJO-DLB, 22 2011 WL 587096, at *2 (E.D. Cal. Feb. 9, 2011) (\$34,500); *Thomas v. Colvin*, No. 1:11-cv- 23 01291-SKO, 2015 WL 1529331, at *3 (E.D. Cal. Apr. 3, 2015) (\$44,603.50). 24 Accordingly, the Court finds the fees sought by Counsel are reasonable in light of the 25 results achieved in this action. An award of attorney's fees pursuant to § 406(b) in the amount of 26 \$19,000.46 is appropriate but must be offset by any prior award of attorney's fees granted under 27 the EAJA. *Gisbrecht*, 535 U.S. at 796. As Plaintiff was previously awarded \$5,000.00 in fees 1 | IV. Conclusion and Order 2 Accordingly, IT IS HEREBY ORDERED: 3 1. Counsel for Plaintiff Jonathan Omar Pefia's unopposed motion for authorization of 4 attorney fees

under 42. U.S.C. § 406(b) (Doc. 31) is GRANTED; 5 2. Counsel for Plaintiff Jonathan Omar Pefia is awarded § 406(b) attorney's fees in the 6 amount of \$19,000.46; and 7 3. Upon the receipt of the full attorney's fees, pursuant to 42 U.S.C. § 406(b), Counsel for 8 Plaintiff Jonathan Omar Pejia shall reimburse to Plaintiff the full amount of the EAJA fee 9 (\$5,000.00) previously awarded. (Doc. 30). 10 | IT IS SO ORDERED. | Dated: _ April 10, 2025 | hr

12 UNITED STATES MAGISTRATE JUDGE

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