

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Christina Herrera v. Commissioner of Social Security Administration

Herrera · No. CV-18-02658-PHX-KML · Decided January 29, 2026

OPINION

1 WO 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF
ARIZONA 8 9 Christina Herrera, No. CV-18-02658-PHX-KML 10 Plaintiff, ORDER 11 v. 12
Commissioner of Social Security Administration, 13 Defendant. 14 15 In 2014, plaintiff Christina
Herrera filed an application for disability benefits. (Doc. 16 15 at 2.) An Administrative Law
Judge later issued a partially-favorable decision.

(Doc. 15 17 at 2.) Dissatisfied with that outcome, in July 2018, Herrera signed a contingency fee
18 agreement with attorney Mark Caldwell. That agreement contemplated Caldwell would 19
represent Herrera “in a federal court action for judicial review of [the] decision” denying 20 her
claim for disability benefits. (Doc. 24-2 at 2.)

The agreement set Caldwell’s fee as an 21 amount “equal to twenty-five percent (25%) of all past-
due benefits awarded to [Herrera] 22 and any other individuals(s) entitled to benefits by reason of
the award to [Herrera].” (Doc. 23 24-2 at 2.) One month after the agreement was executed,
Caldwell filed the present suit. 24 In April 2019 the court reversed the Administrative Law Judge’s
decision and 25 remanded for further proceedings.

(Doc. 18.) A few months later, the court awarded 26 Caldwell \$8,164.80 in attorneys’ fees under
the Equal Access to Justice Act. (Doc. 21.) 27 For unknown reasons the additional proceedings
took a significant amount of time, but 28 eventually Herrera and her child were awarded benefits.

The agency withheld 25% of the 1 awards (i.e., \$58,233.75) to pay Caldwell. (Doc. 24-1 at 4, 9.)
The agency also awarded 2 Herrera’s administrative counsel \$11,975.00 for the work performed
during the agency 3 proceedings. (Doc. 24 at 2.) Caldwell now seeks an award of \$46,258.75 in
attorneys’ fees, 4 calculated as the 25% withheld by the agency (\$58,233.75) minus the
administrative 5 attorneys’ fees (\$11,975.00) already paid.

(Doc. 24 at 1.) According to Caldwell’s billing 6 records, he performed 40.5 hours of work in this
case. The amount he seeks therefore 7 represents an effective hourly rate of \$1,142.19. The
commissioner “neither supports nor 8 opposes” Caldwell’s request. (Doc. 27 at 3.) 9 The relevant
statute allows the court to award Caldwell “a reasonable fee for [his] 10 representation, not in
excess of 25 percent of the total of the past-due benefits.” 42 U.S.C. 11 § 406(b).

When an attorney files a request for fees under § 406(b), the court must “look[] 12 first to the
contingent-fee agreement, then test[] it for reasonableness.” *Crawford v. Astrue*, 13 586 F.3d 1142,

1149 (9th Cir. 2009) (simplified). There is no “definitive list of factors that 14 should be considered in determining whether a fee is reasonable or how those factors 15 should be weighed.” Id. at 1151.

But the court’s reasonableness inquiry may look to 16 “substandard performance, delay, or benefits that are not in proportion to the time spent on 17 the case.” Id. 18 Here, the agreement allows Caldwell to recover 25% of past-due benefits. There is 19 “no evidence of fraud or overreaching in the making of the 25% contingent-fee 20 agreement[,],” so the 25% permitted by the agreement is an appropriate starting point.

Id. 21 The only other question is whether the amount the agreement contemplates Caldwell be 22 awarded is reasonable. There is no evidence of poor performance or delay by Caldwell. 23 And Caldwell’s effective hourly rate of \$1,149.19 is reasonable based on the work 24 Caldwell performed and the risk that no benefits would be awarded. 25 / 26 / 27 / 28 / 1 IT IS ORDERED the Motion for Attorneys’ Fees under 42 U.S.C. § 406(b) (Doc.

2|| 24)is GRANTED in the amount of \$46,258.75. 3 IT IS FURTHER ORDERED plaintiff’s counsel shall, after receipt of the above- awarded fee, refund to plaintiff all fees awarded under the EAJA, in the amount of 5|| \$8,164.80. 6 Dated this 29th day of January, 2026. 7 9 AA Ata Ve OC ft ☐☐ Honorable Krissa M. Lanham 10 United States District Judge 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 _3-