

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRACIE STILL,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No. 1:11-cv-00637-NONE-EPG

ORDER GRANTING MOTION FOR  
ATTORNEY'S FEES

(ECF No. 26)

ORDER SEALING DOCKET NUMBERS 26-2  
AND 26-3 AND REQUIRING COUNSEL TO  
RE-FILE SUCH DOCUMENTS WITH  
PROPER REDACTION

Sengthiene Bosavanh ("Counsel") of the Offices of Jeffrey Milam Law, attorney for Tracie Still ("Plaintiff"), filed a Motion for Attorney's Fees Pursuant to 42 U.S.C. § 406(b) on November 16, 2015. (ECF No. 26). Plaintiff was served with the motion. (ECF No. 26-5). Plaintiff has not filed any opposition to the motion. The Commissioner filed a response to the motion on November 20, 2015 and indicated that it has no opposition to the motion. (ECF No. 27). On March 3, 2021, this case was reassigned and changed from case number 1:11-cv-00637-LJO-DLB to 1:11-cv-00637-NONE-EPG.

For the reasons set forth below, the motion for attorney's fees is granted. In addition, as set forth below, the Court seals certain documents that contain Plaintiff's full Social-Security number and requires Plaintiff's counsel to re-file such documents with the proper redaction.

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**I. BACKGROUND**

On April 11, 2011, Plaintiff commenced this action for judicial review of a final denial of an application for disability benefits under the Social Security Act by the Commissioner of the Social Security Administration. (ECF No. 1). On March 12, 2012, the Court entered an order granting Plaintiff's appeal and remanding the action to the Commissioner. (ECF No. 21). On July 10, 2012, the Court entered an award of \$5,500 for attorney fees under the Equal Access to Justice Act ("EAJA"). (ECF No. 25).

On July 30, 2015, Plaintiff received a fully favorable award from the Commissioner. (ECF No. 26-2). In October 2015,<sup>1</sup> the Commissioner informed Plaintiff that it was withholding \$16,861 from her past-due benefits "in case we need to pay your lawyer," and indicated that that amount constituted 25% of Plaintiff's past-due benefits. (ECF No. 26-3 at 3).

On November 16, 2015, Counsel filed a motion for attorneys' fees. The motion seeks \$16,861 in attorneys' fees under 42 U.S.C. § 406(b) and an order for Counsel to release to Plaintiff \$5,500 in fees previously received under the Equal Access to Justice Act. (ECF No. 26). Counsel contends these fees are reasonable against the 40.3 hours of work conducted under the contingency fee agreement, which permits Counsel to retain 25% of the past-due benefits.

**II. DISCUSSION**

**A. Motion for Attorney's Fees**

Pursuant to the Social Security Act, attorneys may seek a reasonable fee for cases in which they have successfully represented social security claimants. Section 406(b) provides the following in relevant part:

Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such 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, and the Commissioner of Social Security may . . . certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits.

42 U.S.C.A. § 406(b)(1)(A) (West 2015) (emphasis added). "In contrast to fees awarded under

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<sup>1</sup> The exact date is unreadable. (ECF No. 26-3 at 1).

1 fee-shifting provisions such as 42 U.S.C. § 1988, the fee is paid by the claimant out of the past-  
2 due benefits awarded; the losing party is not responsible for payment.” *Crawford v. Astrue*, 586  
3 F.3d 1142, 1147 (9th Cir.2009) (en banc) (citing *Gisbrecht v. Barnhart*, 535 U.S. at 789, 802  
4 (2002)). However, the Commissioner has standing to challenge the award, despite the fact that  
5 the Section 406(b) attorney's fee award is not paid by the government. *Craig v. Sec’y Dep’t of*  
6 *Health & Human Servs.*, 864 F.2d 324, 328 (4th Cir.1989), *abrogated on other grounds in*  
7 *Gisbrecht*, 535 U.S. at 807. The goal of fee awards under Section 406(b) is to provide adequate  
8 incentive to represent claimants while ensuring that the usually meager disability benefits  
9 received are not greatly depleted. *Cotter v. Bowen*, 879 F.2d 359, 365 (8th Cir.1989), *abrogated*  
10 *on other grounds in Gisbrecht*, 535 U.S. at 807.

11 The twenty-five percent (25%) maximum fee is not an automatic entitlement, and courts  
12 are required to ensure that the requested fee is reasonable. *Gisbrecht*, 535 U.S. at 808–09 (Section  
13 406(b) does not displace contingent-fee agreements within the statutory ceiling; instead, Section  
14 406(b) instructs courts to review for reasonableness fees yielded by those agreements). “Within  
15 the 25 percent boundary . . . the attorney for the successful claimant must show that the fee sought  
16 is reasonable for the services rendered.” *Id.* at 807; *see also Crawford*, 586 F.3d at 1148 (holding  
17 that Section 406(b) “does not specify how courts should determine whether a requested fee is  
18 reasonable” but “provides only that the fee must not exceed 25% of the past-due benefits  
19 awarded”).

20 Generally, “a district court charged with determining a reasonable fee award under §  
21 406(b)(1)(A) must respect ‘the primacy of lawful attorney-client fee arrangements,’ . . . ‘looking  
22 first to the contingent-fee agreement, then testing it for reasonableness.’” *Crawford*, 586 F.3d at  
23 1148 (quoting *Gisbrecht*, 535 U.S. at 793, 808). The United States Supreme Court has identified  
24 several factors that may be considered in determining whether a fee award under a contingent-fee  
25 agreement is unreasonable and therefore subject to reduction by the court: (1) the character of the  
26 representation; (2) the results achieved by the representative; (3) whether the attorney engaged in  
27 dilatory conduct in order to increase the accrued amount of past-due benefits; (4) whether the  
28 benefits are large in comparison to the amount of time counsel spent on the case; and (5) the

1 attorney's record of hours worked and counsel's regular hourly billing charge for non-contingent  
2 cases. *Id.* (citing *Gisbrecht*, 535 U.S. at 807–08).

3 Here, Plaintiff entered into a fee agreement that provides for attorney's fees in the amount  
4 of 25% of the past-due benefits. (ECF No. 26-1). The Court has considered Counsel's  
5 representation of Plaintiff and the results achieved by counsel. Counsel indicates Counsel  
6 expended a total of 40.3 hours litigating Plaintiff's case. (ECF No. 26-4 at 2-4). This represents an  
7 hourly rate of \$418.39. There is no indication that a reduction of the award is warranted due to  
8 any substandard performance by counsel in this matter. Counsel is an experienced attorney who  
9 secured a successful result for Plaintiff. There is also no evidence that counsel engaged in any  
10 dilatory conduct resulting in excessive delay. Thus, the requested fee amount is not excessive in  
11 relation to the past-due award. *See generally, Shepard v. Comm'n of Social Security*, No. 1:14-  
12 cv-1166 SMS, 2016 WL 3549261 (E.D. Cal. June 29, 2016) (granting \$17,125.00 pursuant to  
13 Section 406(b)); *Schneider v. The Comm'n of Soc. Sec.*, No. 14-cv-00034 SKO, 2016 WL  
14 2654228 (E.D. Cal., May 10, 2016) (granting \$10,253.96); *Whiteside v. The Comm'n of Soc. Sec.*,  
15 No. 1:13-cv-1337-BAM, 2015 WL 36545054 (E.D. Cal., June 11, 2015) (granting \$6,000.00). In  
16 making this determination, the Court recognizes the contingent-fee nature of this case and  
17 counsel's assumption of risk in agreeing to represent Plaintiff under such terms. *See Hearn v.*  
18 *Barnhart*, 262 F.Supp.2d 1033, 1037 (N.D. Cal.2003) ("Because attorneys [] contend with a  
19 substantial risk of loss in Title II cases, an effective hourly rate of only \$450 in successful cases  
20 does not provide a basis for this court to lower the fee to avoid a windfall.").

21 Counsel received \$5,500 in EAJA fees previously. An award of § 406(b) fees must be  
22 offset by any prior award of attorney fees granted under the EAJA. *See* 28 U.S.C. § 2412;  
23 *Gisbrecht*, 535 U.S. at 796. Counsel was previously awarded \$5,500 in fees pursuant to the  
24 EAJA; as such, the § 406(b) award will be offset by \$5,500.

### 25 **B. Sealing and Re-Filing Certain Papers**

26 Under Federal Rule of Civil Procedure 5.2(a), only the last four digits of a Social-Security  
27 number may be visible in filings. Fed. R. Civ. P. 5.2(a) (West 2015) ("Unless the court orders  
28 otherwise, in an electronic or paper filing with the court that contains an individual's social-

1 security number . . . the filing may include only: (1) the last four digits of the social-security  
2 number . . .”). Plaintiff’s full Social-Security number is shown on almost every page of docket  
3 number 26-2 and on every page of docket number 26-3. As such, the Court will seal those  
4 documents and Counsel shall re-file such sealed documents in compliance with Federal Rule of  
5 Civil Procedure 5.2(a).

6 **III. CONCLUSION AND ORDER**

7 For the reasons stated above, the fees sought by Counsel pursuant to Section 406(b) are  
8 reasonable. Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The Motion for Attorney’s Fees pursuant to Section 406(b) in the amount of \$16,861,  
10 (ECF No. 26), is GRANTED;
- 11 2. Counsel is ordered to reimburse Plaintiff \$5,500 of the § 406(b) fees awarded as an  
12 offset for the EAJA fees previously awarded pursuant to 28 U.S.C. § 2412(d);
- 13 3. Counsel is directed to send a copy of this order to Plaintiff;
- 14 4. The Clerk of Court is directed to SEAL docket numbers 26-2 and 26-3; and
- 15 5. Within thirty days of the date of this Order, Counsel shall re-file such sealed  
16 documents, and such filings shall comply with Federal Rule of Civil Procedure 5.2(a).

17 IT IS SO ORDERED.

18 Dated: **March 23, 2021**

19 /s/ Eric P. Gray  
20 UNITED STATES MAGISTRATE JUDGE  
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