

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**CLARISSA J. S.,**

**Plaintiff,**

**v.**

**ANDREW SAUL, COMMISSIONER OF  
SOCIAL SECURITY,**

**Defendant.**

**Case No. 16-CV-1354-JAR**

**MEMORANDUM AND ORDER**

This matter comes before the Court on Plaintiff's Motion for Approval of Attorney Fees (Doc. 27), which seeks attorney's fees pursuant to 42 U.S.C. § 406(b)(1) in the amount of \$18,624.25. The motion is fully briefed, and the Court is prepared to rule. For the reasons stated below, the Court grants Plaintiff's motion, awards \$18,624.25 in reasonable attorney's fees, and orders Plaintiff's counsel to refund to Plaintiff the smaller fee amount (\$7,500) that he received under the Equal Access to Justice Act ("EAJA") after he receives his attorney's fees.

**I. Background**

Plaintiff hired counsel to prosecute her claim for social security benefits in January 2016. They entered into a contingent-fee agreement for 25% of all retroactive benefits.<sup>1</sup> On September 13, 2016, Plaintiff filed a Complaint in this Court appealing the administrative decision denying her disability benefits.<sup>2</sup> On August 10, 2017, this Court reversed the decision of the

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<sup>1</sup> Doc. 28-3.

<sup>2</sup> Doc. 1.

Commissioner and remanded the case to the Administrative Law Judge.<sup>3</sup> On November 27, 2017, this Court approved an order for attorney’s fees under the EAJA in the amount of \$7,500.<sup>4</sup>

On remand, the Commissioner awarded Plaintiff total retroactive benefits of \$98,497 and withheld twenty-five percent, \$24,624.25. This amount was reduced by \$6,000 due to Plaintiff’s hearing level representative’s fee. Thus, the total amount of funds available is \$18,624.25.<sup>5</sup>

Plaintiff’s counsel now seeks attorney’s fees. He provides an affidavit in which he states that he did not receive a Notice of the Award when it was issued and only recently became aware of the retroactive benefit award on May 5, 2020.<sup>6</sup> On that date, the Social Security Administration (“SSA”) sent Plaintiff’s counsel a letter stating that it was continuing to hold \$18,624.25, representing 25% of Plaintiff’s past-due benefits award minus \$6,000 it had already paid the hearing level representative.<sup>7</sup> Defendant takes no position on counsel’s fee request but defers to the Court’s discretion on the reasonableness of the award.<sup>8</sup>

## II. Legal Standard

Title 42 U.S.C. § 406(b)(1)(A) provides that “[w]henver a court renders a judgment favorable to a claimant . . . the court may determine and allow as part of its judgment a reasonable [attorney] fee . . . not in excess of 25 percent of the total of the past-due benefits.”<sup>9</sup>

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<sup>3</sup> Docs. 21, 22.

<sup>4</sup> Doc. 26.

<sup>5</sup> The \$7,500 in EAJA fees has not been paid out yet.

<sup>6</sup> Doc. 28-1.

<sup>7</sup> Doc. 28-2.

<sup>8</sup> Doc. 29.

<sup>9</sup> “The [SSA] deals with the administrative and judicial review stages discretely: § 406(a) governs fees for representation in administrative proceedings; § 406(b) controls fees for representation in court.” *McGraw v. Barnhart*, 450 F.3d 493, 498 (10th Cir. 2006) (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002)). “Under the SSA scheme, each authority sets fees for the work done before it; thus, the court does not make fee awards for work at the agency level, and the Commissioner does not make fee awards for work done before the court.” *Id.* (citations omitted).

This provision allows the Court to award attorney fees in conjunction with a remand for further proceedings where a plaintiff eventually is awarded past-due benefits.<sup>10</sup> The amount of a fee award under § 406(b) is committed to the Court’s sound discretion.<sup>11</sup>

In determining whether a contingent-fee agreement produces reasonable results or whether the fee award should be reduced, the Supreme Court has directed courts to consider several factors, specifically: (1) the character of the representation and whether the results it achieved were substandard; (2) whether the attorney was responsible for delay that caused benefits to accrue during the pendency of the case; and (3) whether the benefits awarded are large in comparison to the amount of time counsel spent on the case.<sup>12</sup> The Supreme Court noted that “the comparison of amount of benefits to time spent might be aided by submission of plaintiff’s attorney’s billing record and normal hourly billing rate.”<sup>13</sup> “If counsel is awarded fees under both the EAJA and the SSA, counsel must refund the smaller amount to the claimant.”<sup>14</sup>

### **III. Discussion**

Applying the factors described above, the Court concludes that the requested fee of \$18,624.25 is reasonable. Counsel achieved a favorable result and was not responsible for any delay in the case. Plaintiff received an award of \$98,497. Counsel seeks attorney’s fees in the amount of \$18,624.25 which represents 25% (\$4,656.18) of the past due benefits minus the \$6,000 already paid to Plaintiff’s representative at the hearing level. Plaintiff’s counsel,

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<sup>10</sup> *Id.* at 503.

<sup>11</sup> *Id.* at 505 (citation omitted); *see also Gordon v. Astrue*, 361 F. App’x 933, 934 (10th Cir. 2010) (explaining that “a district court enjoys considerable discretion in the setting of a fee award for work done before it”).

<sup>12</sup> *Gisbrecht*, 535 U.S. at 808 (citations omitted).

<sup>13</sup> *Robbins v. Barnhart*, No. 04-1174-MLB, 2007 WL 675654, at \*2 (D. Kan. Feb. 28, 2007) (citing *Gisbrecht*, 535 U.S. at 808).

<sup>14</sup> *McGraw*, 450 F.3d at 497–98 (first citing *Gisbrecht*, 535 U.S. at 796; then citing *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986)).

however, shall refund \$7,500 (the EAJA award) from the \$18,624.25 paid out to Plaintiff. Thus, Plaintiff's counsel will net \$11,124.25 in attorney's fees. Counsel spent 43.95 hours representing Plaintiff. Thus, the hourly rate equals \$253.11 per hour.<sup>15</sup> In sum, the Court finds the attorney's fee request reasonable, and the Court grants Plaintiff's motion.

**IT IS THEREFORE ORDERED BY THE COURT THAT** Plaintiff's Motion for Approval of Attorney Fees (Doc. 27) is granted. Plaintiff's attorney, David H.M. Gray, is entitled to \$18,624.25 in attorney's fees. From that amount, Plaintiff's counsel shall refund \$7,500, the amount of the smaller EAJA award, to Plaintiff. The Commissioner shall pay the fees from the amount which he is withholding from Plaintiff's past-due benefits. The Commissioner shall pay the remainder of the withheld benefits to Plaintiff.

**IT IS SO ORDERED.**

Dated: June 19, 2020

S/ Julie A. Robinson  
JULIE A. ROBINSON  
CHIEF UNITED STATES DISTRICT JUDGE

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<sup>15</sup> See *Williams v. Berryhill*, No. 15-1255-SAC, 2018 WL 3609753, at \*1 (D. Kan. July 27, 2018) (collecting cases approving fee awards as reasonable with hourly rates ranging from \$258.63 to \$432.02)