

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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RANDALL KURTZ,

Plaintiff,

v.

ORDER

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

03-cv-164-jcs

Defendant.

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On November 21, 2003 the Court remanded the above entitled matter to the Commissioner because the ALJ did not discuss the specific reasons for his credibility finding and did not address the strength or side effects of plaintiff's medications pursuant to Social Security Ruling 96-7. Plaintiff prevailed on remand to the Commissioner. A favorable decision was issued on June 20, 2007 awarding plaintiff back benefits from December 1997. Plaintiff was awarded \$87,301.00 in past-due benefits. Twenty five percent of this amount, \$21,825.25, was withheld by the Social Security Administration for the direct payment of attorney fees pursuant to written contract signed by plaintiff and attorney Frederick J. Daley on July 25, 2003.

On April 19, 2004 the Court entered judgment in this matter in favor of plaintiff and against defendant granting plaintiff's request for attorney fees and costs under the Equal Access to Justice Act (EAJA) in the amount of \$5,956.17.

On November 26, 2007 plaintiff's attorney moved pursuant to 42 U.S.C. § 406(b) for the approval of attorney fees of \$21,825.25. This amount represents 25% of plaintiff's past due benefits totaling \$87,301.00. The amount would be reduced by \$5,956.17 which counsel has already received under the EAJA. This motion has been fully briefed and is ready for decision.

#### MEMORANDUM

Plaintiff's attorney moves for approval of attorney fees of \$21,825.25, 25% of plaintiff's past due benefits of \$87,301.00. Defendant argues that this request is unreasonable.

In Gisbrecht v. Barnhart, 535 U.S. 789 (2002), the Court addressed the reasonableness of attorney fee awards under 42 U.S.C. §406(b). Factors to be considered in determining reasonableness are the character of the representation and the results received. The Court stated that a reduction in attorney fees may be warranted where the amount received would represent a windfall to the attorney in light of the time and effort expended by the lawyer. Id., 808-809.

In this case plaintiff's counsel prevailed in this Court on November 21, 2003 and then subsequently obtained a favorable decision from the Social Security Administration in 2007. Plaintiff was awarded past due benefits since 1997. Both the character of the representation by counsel and the results received

support the reasonableness of the award of 25% of plaintiff's past due benefits as attorney fees in this case.

Although defendant argues that the award amounts to a windfall to plaintiff's counsel, the Court is not persuaded. Plaintiff and his counsel agreed to the amount of attorney fees pursuant to a written agreement. In accepting social security cases pursuant to a contingency fee agreement counsel accepts the risk of not being compensated for his time where he does not prevail either in court or at the administrative level. Contingency fee agreements in these cases should be upheld where reasonable because they provide experienced counsel for plaintiffs seeking benefits. The 25% contingency fee is not a windfall where as in this case counsel obtained excellent results for plaintiff pursuant to a written contingency fee agreement.

The Court finds that the request is reasonable and will approve attorney's fees under 42 U.S.C. §406(b) in the amount of \$15,869.08 (\$21,825.25 minus the fees awarded under the EAJA of \$5,956.17).

ORDER

IT IS ORDERED that attorneys' fees of \$15,869.08 are APPROVED under 42 U.S.C. §406(b).

Entered this 3<sup>rd</sup> day of January, 2008.

BY THE COURT:

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. SHABAZ  
District Judge