

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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JIMMY LEE SYKES, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	15-cv-2248-TMP
	)	
NANCY A. BERRYHILL,	)	
ACTING COMMISSIONER OF SOCIAL	)	
SECURITY,	)	
	)	
Defendant.	)	
	)	

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**ORDER GRANTING PETITION FOR AWARD OF ATTORNEY'S FEES**

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Before the court is plaintiff Jimmy Lee Sykes, Jr.'s attorney Emily-Ruth S. Ratliff's Petition for Award of Attorney's Fees, filed on December 19, 2016. (ECF No. 22.) The Commissioner of Social Security ("Commissioner") does not oppose the petition. (ECF No. 23.) For the reasons below, the court grants the petition.

**I. FINDINGS OF FACT**

Ratliff seeks an award of attorney's fees totaling \$10,773.50 as a prevailing party under the Social Security Act ("the Act"), 42 U.S.C. § 406(b), to cover the cost of pursuing judicial review of a decision by the Commissioner denying Sykes' claim for disability benefits under Title II of the Act. After Sykes filed his merits brief in this case, the court remanded the case to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) upon motion of the

Commissioner. (ECF Nos. 15, 16, 17, 18.) Sykes was eventually awarded \$67,094.00 in past due benefits under Title II of the Act. The Commissioner initially withheld 25% - \$16,773.50 - of those benefits. (See ECF No. 22-8 at 4.) Ratliff has already been awarded \$6,000 by the Commissioner for work performed at the administrative level. The Commissioner is currently withholding the remaining \$10,773.50 from Sykes' past due benefits until such time the court determines what amount Ratliff should be paid for services performed in connection with the federal court proceedings.

Sykes and Ratliff entered into a contingency-fee agreement providing that Ratliff would receive 25% of Sykes' past due benefits if his case was appealed to a federal court and the Commissioner ultimately issued a favorable decision after a remand by the court. Ratliff argues she should receive the remaining \$10,773 of the withheld percentage of the past due benefits for her services at the federal court level. In support of her motion Ratliff has submitted, among other documents, a statement of hours spent on the case and an affidavit. (ECF No. 22-2, 22-3.)

## **II. CONCLUSIONS OF LAW**

Section 406(b) of the Act states that

[w]henEVER 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 . . . .

42 U.S.C. § 406(b)(1)(A). Section 406(b)(1) “does not displace contingent-fee agreements as the primary means by which fees are set for successfully representing Social Security benefits in court. Rather, § 406(b) calls for court review of such arrangements as an independent check, to assure that they yield reasonable results in particular cases.” Gisbrecht v. Barnhart, 535 U.S. 789, 807 (2002). Within the 25% boundary set by Congress, “the attorney for the successful claimant must show that the fee sought is reasonable for the services rendered.” Id. A reduction in the fee may be justified based on “the character of the representation and the results the representation achieved.” Id. at 808. Courts may reduce the fee award when, among other things, representation was substandard, benefits are large in comparison to the amount of time counsel spent on the case, counsel is responsible for delay, and the award would amount to a windfall to counsel. Id.

The Sixth Circuit’s precedents “accord[] a rebuttable presumption of reasonableness to contingency-fee agreements that comply with § 406(b)’s 25-percent cap.” Lasley v. Comm’r of Soc. Sec., 771 F.3d 308, 309 (6th Cir. 2014); see Rodriguez v. Bowen, 865 F.2d 739, 746 (6th Cir. 1989) (“[I]f the agreement states that the attorney will be paid twenty-five percent of the benefits awarded, it should be given the weight ordinarily accorded a rebuttable presumption.”); Droke v. Barnhart, No. 02-1284-T/AN,

2005 WL 2174397, at \*1 (W.D. Tenn. Sept. 6, 2005) (“Since Gisbrecht, most courts have been deferential to the terms of the contingency fee contracts in § 406(b) cases, accepting that the resulting de facto hourly rates may exceed those for non contingency-fee arrangements.”) (internal citations omitted) (internal quotation marks omitted). The Sixth Circuit has also indicated that “a hypothetical hourly rate that is less than twice the standard rate is *per se* reasonable, and a hypothetical hourly rate that is equal to or greater than twice the standard rate may well be reasonable.”<sup>1</sup> Hayes v. Sec'y of Health & Human Servs., 923 F.2d 418, 422 (6th Cir. 1991); see Lasley, 771 F.3d at 309.

The fee Ratliff seeks would equal a hypothetical hourly rate of \$473.56.<sup>2</sup> Although this may appear to be a high hourly rate on an absolute basis, courts have approved contingency-fee agreements yielding much higher hypothetical hourly rates. See, e.g., Whitehead v. Barnhart, No. 1:04-1236-T, 2006 WL 681168, at \*6 (W.D. Tenn. Mar. 14, 2006) (approving effective hourly rate of \$982.00);

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<sup>1</sup>In her affidavit supporting the fee petition, Ratliff does not state what her standard hourly rate is.

<sup>2</sup>According to the statement of time submitted by Ratliff, 44 hours of attorney time were spent working on Sykes' case. However, at most, only 22.75 of those hours were spent litigating the appeal in federal court. (See ECF 22-3.) “[E]ach tribunal may award fees only for the work done before it.” Horenstein v. Sec'y of Health & Human Servs., 35 F.3d 261, 262 (6th Cir. 1994). “[I]n cases where the court remands the case back to the Secretary for further proceedings, the court will set the fee . . . for the work performed before it, and the Secretary will award whatever fee the Secretary deems reasonable *for the work performed on remand and*

Droke, 2005 WL 2174397, at \*2 (W.D. Tenn. Sept. 6, 2005) (approving effective hourly rate of \$830.82). Moreover, Ratliff achieved an excellent result in this case. After Ratliff filed the merits brief on behalf of Sykes, the Commissioner moved for a sentence four remand, which the court granted. On remand, the Commissioner issued a fully favorable decision and Sykes was awarded \$67,094.00 in past due benefits under Title II. There is no evidence that Ratliff's representation was in any way substandard, or that Ratliff was responsible for any delay in the resolution of the case. Therefore, the court finds that a fee of the remaining portion (\$10,773.50) of the withheld 25% portion of past due benefits is reasonable, and no deduction is warranted.

The court has previously awarded \$3,679.74 in attorney's fees to Sykes under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(D). (ECF No. 21.); see Lowery v. Comm'r of Soc. Sec., 940 F. Supp. 2d 689, 691 (S.D. Ohio 2013) (citing Jankovich v. Bowen, 868 F.2d 867, 871 n. 1 (6th Cir. 1989)). In her petition Ratliff acknowledges her obligation to refund the \$3,679.74 EAJA fee to Sykes. See Gisbrecht, 535 U.S. at 796.

### III. CONCLUSION

For the reasons above, Ratliff's Petition for Award of Attorney's Fees is GRANTED. The Commissioner shall pay Ratliff the remaining \$10,773.50 withheld from Sykes' past due benefits.

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*prior administrative proceedings.*" Id. (emphasis added).

Ratliff is directed to refund the EAJA award to Sykes.

IT IS SO ORDERED.

s/ Tu M. Pham  
TU M. PHAM  
United States Magistrate Judge

March 2, 2017  
Date