FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

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US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

IN RE: PROCEDURES FOR APPLYING FOR ATTORNEY'S FEES UNDER 42 U.S.C. §§ 406(b) AND 1383 (d)(2)

Misc. Case No. 6:12-MC-124-Orl-22

ORDER

Section 406(b) and section 1383(d)(2) with regard to Title XVI claims of Title 42 govern motions for attorney's fees in Social Security disability cases. Section 406(b) provides in relevant part that "the court may determine and allow as part of its judgment a reasonable fee for [an attorney's] 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). However, at the time the judgment is entered, the specific amount of past-due benefits, if any, is unknown.

Federal Rule of Civil Procedure 54(d)(2)(B) applies to the filing of a request for attorney's fees, pursuant to Sections 406(b) and 1383(d)(2), and it requires a motion for attorney's fees to be filed within fourteen (14) days after judgment unless provided otherwise by statute or order of the court. Fed.R.Civ.P. 54(d)(2)(B). Because the amount of past-due benefits and attorney's fees is unknown at the time of judgment, the Court adopts the following procedures and filing schedule with regard to section 406(b) (and section 1383(d)(2)) motions for attorney's fees:

(I) If the plaintiff's attorney seeks attorney's fees under 42 U.S.C. §§ 406(b) or 1383(d)(2), he or she must file a motion for approval of such fees no later than thirty (30) days after the date of the Social Security letter sent to the plaintiff's counsel of record at the conclusion of the Agency's past-due benefit calculation stating the amount withheld for attorney's fees.

(II) Any response to the motion shall be filed within the time provided in the Local Rules. The motion shall state the amount (if any) of attorney's fees awarded or sought by Plaintiff pursuant to 42 U.S.C. § 406(a) and any amount previously awarded by the court, pursuant to the Equal Access to Justice Act.

(III) Plaintiff shall file any reply within ten (10) days of service of defendant's response.

(IV) Counsel are reminded of the requirement to comply with Local Rule 3.01(g) prior to filing any motion which often expedites disposition of the fee request.

IT IS SO ORDERED.

DONE AND ORDERED in Chambers, in Orlando, Florida, this 13th day of November, 2012.

Anne C Conway

ANNE C. CONWAY
Chief United States District Judge