

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WISCONSIN

Kimberly Janick v. Frank Bisignano, Commissioner of Social
Security

Janick · No. 19-cv-601-wmc · Decided May 8, 2026

SUMMARY

The Western District of Wisconsin grants Kimberly Janick’s attorney’s petition for fees under 42 U.S.C. § 406(b) following a sentence-four remand in a Social Security case. The court approves gross representative fees of \$13,680.25, allows counsel to retain the previously awarded \$5,800.00 in EAJA fees, and directs payment of the \$7,880.25 net amount from withheld past-due benefits.

CASE DETAILS

COURT	United States District Court for the Western District of Wisconsin
WRITING FOR THE COURT	William M. Conley
JURISDICTION	United States District Court for the Western District of Wisconsin
DECIDED	May 8, 2026
DOCKET	19-cv-601-wmc
DISPOSITION	other
PROCEDURAL POSTURE	Following a sentence-four remand in a Social Security disability case, plaintiff's attorney petitioned for an award of fees under 42 U.S.C. § 406(b)(1).
STANDARD OF REVIEW	Reasonableness review of an attorney-fee request under 42 U.S.C. § 406(b)(1)(A), subject to the statutory 25-percent cap and the requirement that the fee be reasonable.
PRECEDENTIAL VALUE	unpublished and nonprecedential
PARTIES	Kimberly Janick v. Frank Bisignano, Commissioner of Social Security

TOPICS

- attorney fees
- judicial review of agency action
- administrative law
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether counsel's requested attorney fee under 42 U.S.C. § 406(b)(1)(A) was reasonable and could be approved in an amount not exceeding 25 percent of the past-due benefits.
2. Whether counsel could retain the prior EAJA award while receiving the § 406(b) award, with the EAJA amount deducted from the gross § 406(b) award.

HOLDINGS

1. The court approved representative fees under 42 U.S.C. § 406(b)(1) in the gross amount of \$13,680.25, finding the requested fee reasonable and within the statutory 25-percent limit.
2. Counsel may retain the previously awarded \$5,800.00 EAJA fee only as partial satisfaction of the § 406(b) award; the EAJA amount must be offset against the gross § 406(b) fee, leaving a net award of \$7,880.25.

KEY QUOTATIONS

“a reasonable fee . . . not in excess of 25 percent of the . . . past-due benefits”

“out of, and not in addition to, the amount of [the] past-due benefits.”

“[A]n EAJA award offsets an award under Section 406(b).”

FACTUAL BACKGROUND

The court had previously reversed and remanded Janick's Social Security case, and the remand resulted in past-due and auxiliary benefits totaling \$13,680.25 for purposes of the requested representative fee. Counsel sought approval of a § 406(b) fee and asked to retain a prior \$5,800.00 EAJA award, resulting in a net payment of \$7,880.25 from past-due benefits. Neither Janick nor the Commissioner objected to the requested fee arrangement.

PROCEDURAL HISTORY

On December 16, 2019, the court reversed and remanded the case to the Commissioner for further proceedings under sentence four of 42 U.S.C. § 405(g). After past-due benefits were awarded, counsel sought § 406(b) fees, and the court approved a gross award of \$13,680.25, allowing counsel to retain a previously awarded \$5,800.00 EAJA fee and directing disbursement of the \$7,880.25 net balance from withheld past-due benefits.

DISPOSITION

other

CASES CITED

- *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002)

OPINION

FOR THE WESTERN DISTRICT OF WISCONSIN KIMBERLY JANICK, Plaintiff, ORDER v. 19-cv-601-wmc FRANK BISIGNANO, Commissioner of Social Security,¹ Defendant. On December 16, 2019, the court issued an order reversing and remanding this case to the commissioner for further proceedings under sentence four of 42 U.S.C. § 405(g). Now before the court is plaintiff Kimberly Janick's attorney's petition for fees pursuant to § 406(b) in the net amount of \$7,880.25.

(Dkt. #22.) As part of its judgment, a court may allow "a reasonable fee... not in excess of 25 percent of the... past-due benefits" awarded to the claimant. § 406(b)(1)(A). The fee is payable "out of, and not in addition to, the amount of [the] past-due benefits." *Id.* Counsel asks the court to approve an attorney fee award in the net amount of \$7,880.25, which represents the difference between 25% of the past-due benefits and auxiliary benefits awarded to plaintiff, totaling \$13,680.25 and the prior Equal Access to Justice Act ("EAJA") fee award of \$5,800.00 (see dkt. #21).

Defendant does not take a position on the reasonableness of the requested fee or on counsel's request that counsel retain the EAJA award and receive the net award from past-due benefits. (Dkt. #25.) Having considered the supporting materials filed by plaintiff's attorney, and hearing no objection from plaintiff or defendant, the court will grant the motion.

The \$13,680.25 in 1 The court has amended the caption to reflect Bisignano's appointment as Commissioner. See Fed. R. spent on this case and the favorable result he obtained for plaintiff while working on a contingency basis. Of course, counsel is not allowed to recover both awards. Section 406(b) has been harmonized with the EAJA; therefore, even though fee awards may be made under both the EAJA and § 406(b), a claimant's attorney must refund to the claimant the amount of the smaller fee.

Gisbrecht v. Barnhart, 535 U.S. 789, 796 (2002) ("[A]n EAJA award offsets an award under Section 406(b)."). In accordance with the court's past practice, however, the court will allow counsel to retain the EAJA award, and the court will subtract the EAJA award from the amount awarded in this order. ORDER IT IS ORDERED that: 1) Counsel's motion for attorney fees under 42 U.S.C. § 406(b)(1) (dkt. #22) is GRANTED.

2) The court approves representative fees under § 406(b) in the gross amount of \$13,680.25. 3) Counsel may retain the \$5,800.00 previously awarded in EAJA fees in partial satisfaction of the § 406(b) award. 4) The net amount of \$7,880.25 shall be disbursed by the Commissioner from any of plaintiff's past-due benefits being withheld and in accordance with agency policy.

Entered this 8th day of May, 2026. BY THE COURT: /s/ _____

WILLIAM M. CONLEY District Judge

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