

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
INDIANA

Dennis L. Eitler v. Commissioner of Social Security

Eitler · No. 3:23-cv-253 · Decided April 22, 2026

SUMMARY

The United States District Court for the Northern District of Indiana grants Howard D. Olinsky’s motion for attorney fees under 42 U.S.C. § 406(b) following the successful remand and subsequent award of Social Security benefits to Dennis L. Eitler. The court awards \$11,356.50 in § 406(b) fees and orders counsel to refund the previously awarded \$7,293.31 in EAJA fees to the plaintiff.

CASE DETAILS

COURT	United States District Court for the Northern District of Indiana
WRITING FOR THE COURT	Andrew P. Rodovich
JURISDICTION	United States District Court for the Northern District of Indiana
DECIDED	April 22, 2026
DOCKET	3:23-cv-253
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff's counsel moved under 42 U.S.C. § 406(b) for approval of attorney fees for successful representation in federal-court Social Security proceedings following a remand and subsequent award of past-due benefits.
STANDARD OF REVIEW	Reasonableness review of a contingent-fee request under 42 U.S.C. § 406(b), considering the character of the representation, the results achieved, any unjustifiable delay, and whether the requested time is excessive in relation to the past-due benefits.
PRECEDENTIAL VALUE	unknown
PARTIES	Dennis L. Eitler v. Commissioner of Social Security

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether counsel's requested \$11,356.50 fee for representation in federal court was reasonable and within the 25-percent limitation of 42 U.S.C. § 406(b)(1)(A).
2. Whether counsel was required to refund or offset the previously awarded \$7,293.31 EAJA fee upon receipt of the § 406(b) award.

HOLDINGS

1. The requested \$11,356.50 fee was reasonable and permissible under 42 U.S.C. § 406(b) because it did not exceed 25 percent of the claimant's past-due benefits, counsel successfully obtained a remand and favorable benefits decision, there was no indication of delay, and the requested compensation was not excessive in relation to the work performed and results achieved.
2. Counsel may receive awards under both the EAJA and § 406(b), but must refund the smaller fee to the claimant or subtract that amount from the § 406(b) award; here, counsel was required to refund \$7,293.31 in EAJA fees upon receipt of the § 406(b) award.

KEY QUOTATIONS

“Under § 406(b), the court may award a reasonable fee to the attorney who has successfully represented the claimant in federal court, not to exceed twenty-five percent of the past-due benefits to which the social security claimant is entitled.” (Discussion)

“Counsel cannot recover fees under both the EAJA and § 406(b), so they must either refund the EAJA award or subtract that amount from the § 406(b) request.” (Discussion)

FACTUAL BACKGROUND

Eitler applied for Social Security disability benefits in March 2021, alleging disability beginning May 1, 2018. The SSA denied the application, an ALJ issued an unfavorable decision, and the Appeals Council denied review. After Eitler sought judicial review, the district court remanded the matter, after which an ALJ approved the claim and the SSA awarded \$74,226.00 in past-due benefits. Eitler had agreed to pay counsel 25 percent of past-due benefits, and counsel sought \$11,356.50 for 34.1 hours of federal-court representation.

PROCEDURAL HISTORY

The Social Security Administration denied Eitler's application for benefits, and an administrative law judge later issued an unfavorable decision that became the final agency decision after the Appeals Council denied review. Eitler sought judicial review in the Northern District of Indiana, and the court granted the parties' joint motion for remand. On remand, an ALJ approved the claim and the SSA awarded \$74,226.00 in past-due benefits. The court previously awarded counsel \$7,293.31 in EAJA fees and granted the present § 406(b) motion, awarding \$11,356.50 subject to counsel's refund of the EAJA amount to Eitler.

DISPOSITION

other

CASES CITED

- Culbertson v. Berryhill, 139 S. Ct. 517, 520 (2019)
- Gisbrecht v. Barnhart, 535 U.S. 789, 792, 794, 796, 808 (2002)
- Long v. Saul, 2021 WL 2588110, at *1 (N.D. Ind. June 24, 2021)
- Ringle v. Kijakazi, 2021 WL 3550892, at *1 (N.D. Ind. Aug. 11, 2021)
- Lugar v. Commissioner of Social Security, 2024 WL 3518612, at *1 (N.D. Ind. July 22, 2024)

OPINION

Eitler

PER CURIAM.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

DENNIS L. EITLER,)

) Plaintiff,)) Civil Action No. 3:23-cv-253 v.))

COMMISSIONER OF SOCIAL)

SECURITY,)

) Defendant.)

OPINION AND ORDER

This matter is before the court on the Motion for Attorney Fees pursuant to Social Security Act § 206(b)(1) [DE 24] filed by Howard D. Olinsky, counsel for the plaintiff, Dennis L. Eitler, on April 7, 2026. Defendant filed a Response [DE 26] indicating that the Agency neither agreed nor disagreed that Plaintiff's counsel should be awarded fees pursuant to Section 406(b).¹ For the following reasons, the Motion [DE 24] is GRANTED. Background Plaintiff Dennis L. Eitler filed an application for benefits in March 2021, alleging disability onset beginning May 1, 2018. [DE 13]. The Social Security Administration ("SSA") entered an unfavorable decision on September 30, 2021, and on reconsideration in December 2021. Id. After a timely-filed request for a hearing, SSA Administrative Law Judge ("ALJ") 1 Plaintiff filed this Motion pursuant to Social Security Act § 206(b)(1) and 42 U.S.C. Section 406(b). Section 206(b) refers to the section number within the original Social Security Act of 1935. Section 406(b) refers to the same law as codified in the United States Code. For simplicity, the court hereinafter refer only to 42 U.S.C. Section 406(b). Jessica Hodgson issued an unfavorable decision on August 30, 2022. Id. The Appeals Council denied Plaintiff's request for review, making the ALJ's decision the final Agency decision. Id. Plaintiff initiated civil action in this court for judicial review of the denial of his application for benefits on March 30, 2023. [DE 1]. This court granted the Joint Motion for Remand [DE 18] on

December 12, 2023. [DE 19]. Following remand, an ALJ approved Plaintiff's claim for benefits. [DE 24-1]. The SSA issued a Notice of Award letter dated October 4, 2025, awarding \$74,226.00 in past-due benefits. *Id.* Plaintiff agreed to pay Attorney Olinsky 25% of all past-due benefits awarded to him and any beneficiaries by the SSA. [DE 24-2]. Plaintiff filed a Motion for Attorney Fees under the Equal Access to Justice Act ("EAJA") in March of 2024. [DE 21]. The Commissioner filed a Response [DE 22] stating that there was no objection. The court granted the Motion for EAJA fees in March 2024, awarding Plaintiff's counsel \$7,293.31 for attorney fees in full satisfaction of all claims under the EAJA, 28 U.S.C. § 2412. [DE 23]. Attorney Olinsky now asks the court to authorize an award of attorney fees in the total amount of \$11,356.50.00 pursuant to 42 U.S.C. § 406(b). The motion is ripe for ruling. Discussion The Social Security Act allows for a reasonable fee to be awarded both for representation at the administrative level, see 42 U.S.C. § 406(a), as well as representation before the court, see 42 U.S.C. § 406(b). See *Culbertson v. Berryhill*, 139 S. Ct. 517, 520 (2019) (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002)). Under § 406(b), the court may award a reasonable fee to the attorney who has successfully represented the claimant in federal court, not to exceed twenty-five percent of the past-due benefits to which the social security claimant is entitled. 42 U.S.C. § 406(b)(1)(A); *Gisbrecht*, 535 U.S. at 792. "The reasonableness analysis considers the 'character of the representation and the results achieved.'" *Gisbrecht*, 535 U.S. at 808. The award may be reduced because of an attorney's unjustifiable delay or if the amount of time an attorney has spent on a case is excessive in comparison to the past-due benefits. *Gisbrecht*, 535 U.S. at 808. Counsel cannot recover fees under both the EAJA and § 406(b), so they must either refund the EAJA award or subtract that amount from the § 406(b) request. See *Gisbrecht*, 535 U.S. at 796 (explaining that "an EAJA award offsets an award under Section 406(b)"). Attorney Olinsky requests an attorney fee in the amount of \$11,356.50 and contends that the requested fee award is reasonable for the 34.1 hours he spent representing Plaintiff in federal court. [DE 24]. Attorney Olinsky's total requested fee amounts to an hourly rate of \$372.14 for the 29.2 hours of attorney time and \$100.00 per hour for the 4.9 hours of paralegal time. This calculated rate is within the bounds of reasonableness in this district especially considering that these cases are taken on a contingent fee basis. See *Long v. Saul*, 2021 WL 2588110, at *1 (N.D. Ind. June 24, 2021) (awarding a fee equating to \$1,711.96 per hour); *Ringle v. Kijakazi*, 2021 WL 3550892, at

*1 (N.D. Ind. Aug. 11, 2021) (awarding fee equating to \$1,923.00 per hour). Furthermore, there is no

indication of delay in this case. Accordingly, the court finds that the requested fee is reasonable. Fee awards may be made under both the EAJA and § 406(b), but the claimant's attorney must refund the amount of the smaller fee or subtract it from the total fees awarded under § 406(b). *Gisbrecht*, 535 U.S. at 789; *Lugar v. Comm'r of Soc. Sec.*, 2024 WL 3518612, at *1 (N.D. Ind. July 22, 2024). In this Motion [DE 24], Attorney Olinsky has acknowledged that Plaintiff is entitled to a refund of the \$7,293.31 EAJA award that he received. Based on the foregoing reasons,

the court GRANTS the Motion [DE 24] and AWARDS fees to Attorney Howard D. Olinsky in the total amount of \$11,356.50. The court ORDERS Attorney Olinsky to refund the plaintiff, Dennis L. Eitler, the total amount of the previously awarded EAJA fees, \$7,293.31, upon receipt of the § 406(b) fees awarded by the court. ENTERED this 22nd day of April, 2026. /s/ Andrew P. Rodovich United States Magistrate Judge