

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Eric B. v. Frank J. Bisignano

No. Civil Action No. 24-cv-2648-MJS, United States District Court for the District of Columbia (May 22, 2026)

SUMMARY

The United States District Court for the District of Columbia grants Plaintiff’s counsel’s motion for attorney’s fees under 42 U.S.C. § 406(b) following a favorable Social Security benefits decision on remand. The Court approves a total fee of \$25,000 but directs the Social Security Administration to disburse a net award of \$18,960.32 after accounting for the prior Equal Access to Justice Act fee award.

CASE DETAILS

COURT	United States District Court for the District of Columbia
WRITING FOR THE COURT	Matthew J. Sharbaugh
JURISDICTION	United States District Court for the District of Columbia
DECIDED	May 22, 2026
DOCKET	Civil Action No. 24-cv-2648-MJS
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff's counsel moved for attorney's fees under 42 U.S.C. § 406(b) after a successful Social Security disability claim remand and award of past-due benefits.
STANDARD OF REVIEW	The court independently reviews a contingent-fee arrangement and the requested § 406(b) award for reasonableness, considering the particulars of the case and the quality of representation, delay, risk of loss, difficulty, and compensation relative to time spent.
PRECEDENTIAL VALUE	Published
PARTIES	Eric B. v. Frank J. Bisignano, Commissioner of Social Security

TOPICS

- administrative law
- judicial review of agency action
- remedies
- equitable relief

PRACTICE AREAS

- Social Security
- Administrative Law
- Attorney's Fees
- Disability Benefits

QUESTIONS PRESENTED

1. Whether Plaintiff's counsel's requested \$25,000 contingent fee was reasonable and within the statutory limit of 42 U.S.C. § 406(b)(1)(A).
2. Whether the prior EAJA fee award should be handled by requiring counsel to refund it to Plaintiff or by reducing the § 406(b) payment to a net award paid directly by SSA.

HOLDINGS

1. The Court approved Plaintiff's counsel's total requested fee of \$25,000 under 42 U.S.C. § 406(b) as reasonable because it was within the 25 percent statutory cap and was supported by the quality and efficiency of the representation, the favorable result, the absence of delay, the difficulty and risk of the case, and counsel's experience.
2. The Court authorized SSA to pay counsel only the net § 406(b) amount of \$18,960.32, thereby accounting for the prior \$6,039.68 EAJA award without requiring counsel to receive the full § 406(b) amount and separately refund the EAJA award to Plaintiff.

KEY QUOTATIONS

“In the Supreme Court’s words, Section 406(b) is designed to “control, not to displace, fee agreements between Social Security benefits claimants and their counsel.”” (at 2)

“In this way, the statute requires courts to review “such arrangements as an independent check, to assure that they yield reasonable results in particular cases.”” (at 2)

“And then on remand, Plaintiff received a favorable decision and was awarded past-due benefits spanning a nearly five-year period—at a value totaling more than \$140,000—reflecting an outcome that “is precisely the type of result plaintiffs seek and that a contingent-fee arrangement makes available to previously unsuccessful plaintiffs.”” (at 3)

“Fee awards may be made under both prescriptions, but the claimant’s attorney must refund to the claimant the amount of the smaller fee” (at 4)

FACTUAL BACKGROUND

Plaintiff Eric B. sustained a traumatic brain injury and applied for Social Security benefits in July 2021. After repeated unfavorable administrative rulings, counsel represented him in federal court, obtained a remand, and Plaintiff later received a fully favorable benefits decision with eligibility dating to September 2021 and past-due benefits exceeding \$140,000. SSA withheld \$35,106.73, representing 25 percent of the past-due benefits, and counsel sought a total § 406(b) fee of \$25,000, with the prior EAJA award accounted for through a net payment.

PROCEDURAL HISTORY

The Social Security Administration initially denied Plaintiff's benefits claim after multiple administrative hearings and appeals. Plaintiff sought federal-court review, moved for judgment of reversal, and the parties jointly agreed to remand for further proceedings. On remand, SSA issued a fully favorable decision awarding

benefits retroactive to September 2021. The Court previously awarded Plaintiff \$6,039.68 in EAJA fees, and counsel then sought a \$25,000 fee under § 406(b), reduced by the EAJA award to a net payment of \$18,960.32.

DISPOSITION

other

CASES CITED

- Culbertson v. Berryhill, 586 U.S. 53, 55 (2019)
- Gisbrecht v. Barnhart, 535 U.S. 789, 792, 793, 796, 807 (2002)
- Buljina v. Astrue, 828 F. Supp. 2d 109, 114-15 (D.D.C. 2011)
- Shaderock v. Colvin, 220 F. Supp. 3d 47, 49 (D.D.C. 2016)
- Byas v. O'Malley, 2024 WL 4520094, at *1 (D.S.C. Sept. 12, 2024)
- Jackson v. Commissioner of Social Security, 601 F.3d 1268, 1273 (11th Cir. 2010)
- Smith v. Colvin, 214 F. Supp. 3d 14, 19 (D.D.C. 2016)
- Karen O. v. Commissioner of Social Security, 731 F. Supp. 3d 926, 937 n.16 (S.D. Ohio 2024)
- Widmer v. Kijakazi, 668 F. Supp. 3d 446, 447-48 (E.D. Va. 2023)

OPINION

Bennett v. O'Malley

PER CURIAM.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

ERIC B.,

Plaintiff, v. Case No. 24-cv-2648-MJS

FRANK J. BISIGNANO,

Commissioner of Social Security, Defendant.

MEMORANDUM OPINION AND ORDER

This Social Security case is before the Court on a motion for attorney's fees pursuant to 42 U.S.C. § 406(b). For the reasons that follow, the Court GRANTS the motion (ECF No. 16).

BACKGROUND

After sustaining a traumatic brain injury, Plaintiff Eric B. applied for benefits with the Social Security Administration ("SSA") in July 2021. Through several rounds of hearings and appeals, SSA ultimately denied his requested benefits, at which point Plaintiff then sought review in federal court. (ECF No. 1.) Represented by counsel, he filed a motion for judgment of reversal (ECF No. 6), and before the Commissioner's deadline to respond, the parties jointly agreed to remand for further proceedings and a new decision. (ECF Nos. 11, 12.) On remand, SSA convened a supplemental hearing, and Plaintiff ultimately received a fully favorable decision on his claim for benefits, with eligibility dating back to September 2021. (See ECF No. 16-2.) In July 2025, the

parties stipulated to—and the Court awarded—\$6,039.68 in fees to Plaintiff under the Equal Access to Justice Act (“EAJA”). (ECF Nos. 14, 15.) Now, following the favorable decision on remand, Plaintiff’s counsel seeks additional fees under 42 U.S.C. § 406(b) in the net amount of \$18,960.32—i.e., \$25,000.00 minus the \$6,039.69 that the Court previously awarded under EAJA. (ECF No. 16.) The Commissioner filed a response indicating that he “neither supports nor opposes counsel’s request for attorney fees.” (ECF No. 17.)

DISCUSSION

Under the Social Security Act, courts may award attorneys who successfully represent claimants in court “a reasonable fee for such representation, not in excess of 25 percent of ... past- due benefits.” 42 U.S.C. § 406(b)(1)(A). “Past-due benefits” are those “that accrued before the favorable decision” in the case, *Culbertson v. Berryhill*, 586 U.S. 53, 55 (2019), and any fees awarded under Section 406(b) are payable directly out of a claimant’s benefits, *Gisbrecht v. Barnhart*, 535 U.S. 789, 792 (2002). In the Supreme Court’s words, Section 406(b) is designed to “control, not to displace, fee agreements between Social Security benefits claimants and their counsel.” *Id.* at 793. In this way, the statute requires courts to review “such arrangements as an independent check, to assure that they yield reasonable results in particular cases.” *Id.* at 807. Where a contingent-fee arrangement falls within the statutory limitations, the court assesses an award’s reasonableness based on the particulars of the case. *Buljina v. Astrue*, 828 F. Supp. 2d 109, 114 (D.D.C. 2011). In doing so, courts consider the following factors: “(1) quality of representation; (2) whether the attorney delayed the case to allow the benefits to accrue over a longer period; (3) whether there was a risk of loss; (4) the difficulty of the case; and (5) the size of the compensation relative to the time spent on the case.” *Shaderock v. Colvin*, 220 F. Supp. 3d 47, 49 (D.D.C. 2016). Applying these principles here, the Court finds the requested award reasonable. For starters, the fee agreement between Plaintiff and his counsel properly caps any contingency fees at 25% of a past-due benefits award. (See ECF No. 16-3.) Notably, SSA is withholding \$35,106.73 in benefits for purposes of a potential fee award—representing 25% of 2 the past-due benefits awarded to Plaintiff—and Plaintiff’s counsel seeks a gross fee amount of \$25,000, which amounts to less than 72% of those withheld benefits. So far, so good. Application of the various reasonableness factors supports the requested award, too. For one, there is nothing in the record to suggest any sort of insufficient or subpar representation. To the contrary, Plaintiff’s counsel obtained a good result in an efficient and effective manner, expending just a couple dozen hours of lawyer time at the federal-court level. (ECF No. 16 ¶ 11; see also ECF No. 16-4.) And then on remand, Plaintiff received a favorable decision and was awarded past-due benefits spanning a nearly five-year period—at a value totaling more than \$140,000—reflecting an outcome that “is precisely the type of result plaintiffs seek and that a contingent-fee arrangement makes available to previously unsuccessful plaintiffs.” *Shaderock*, 220 F. Supp. 3d at 49. Next, there is no indication of any sort of tactical delay here; counsel promptly filed this motion after the favorable ruling from SSA. More, this case’s history at the administrative level reflects the potential difficulty and

risk of loss. After all, in September 2024, when Plaintiff's counsel took on this representation, Plaintiff had received multiple unfavorable rulings from SSA, reflecting a risk that counsel might ultimately receive no payment at all. And last, counsel's requested fee is not so disproportionate to the time spent on the case as to warrant denial or reduction. Based on the hours submitted, a total award of \$25,000 breaks out to an equivalent rate of approximately \$1,037 per hour. Plaintiff's counsel has practiced for 39 years with substantial experience in disability law and social security appeals specifically. (ECF No. 16. ¶ 11.) These factors, coupled with the risks associated with contingency-based representation, confirm that the requested award is not excessive. See, e.g., *Byas v. O'Malley*, 2024 WL 4520094, at *1 (D.S.C. Sept. 12, 2024) (collecting cases awarding fees under Section 406(b) that represented effective hourly rates at or near \$1,000); cf. *Buljina*, 828 F. Supp. 2d at 115 (“[C]alculation of the 3 hourly rate must not provide the sole basis for adjudicating a petition for attorney's fees when the attorney is retained on a contingency basis.”). That leaves the logistical question of how to implement the fee payment and accompanying refund, i.e., whether to: (1) direct that SSA pay counsel the total amount of \$25,000 and then require counsel to refund the prior (and smaller) EAJA fee award directly to Plaintiff, see *Gisbrecht*, 535 U.S. at 796 (“Fee awards may be made under both prescriptions, but the claimant's attorney must refund to the claimant the amount of the smaller fee” (cleaned up)), or (2) reduce the Section 406(b) fees by the value of the prior EAJA award, such that counsel will be awarded only the net amount and the difference will be disbursed to Plaintiff by SSA, see, e.g., *Jackson v. Comm'r of Soc. Sec.*, 601 F.3d 1268, 1273 (11th Cir. 2010) (“[N]othing in the [statutory framework] forecloses an attorney from effecting the refund by reducing his § 406(b) fee request.”). Plaintiff's counsel urges the latter approach, while the Commissioner takes no position. On balance, the Court believes it reasonable—and certainly more practical—to follow the second path and authorize a net award under Section 406(b). The upshot is that Plaintiff will receive the value of the prior EAJA fee award when SSA disburses the remaining withholdings to him; it simply skips a step of routing that money through Plaintiff's counsel, only to be sent along to Plaintiff in the form of a refund. Plenty of other courts have taken this tack in similar circumstances, and this Court sees no reason not to follow suit. See, e.g., *Smith v. Colvin*, 214 F. Supp. 3d 14, 19 (D.D.C. 2016) (directly awarding counsel the difference between the SSA award and prior EAJA award); *Karen O. v. Comm'r of Soc. Sec.*, 731 F. Supp. 3d 926, 937 n.16 (S.D. Ohio 2024) (same); *Widmer v. Kijakazi*, 668 F. Supp. 3d 446, 447–48 (E.D. Va. 2023) (same). 4

CONCLUSION

For the reasons explained, the Court GRANTS the motion. The Court approves as reasonable Plaintiff's counsel's total requested fee award of \$25,000 under 28 U.S.C. § 406(b). To account for the prior award of fees under EAJA—and to effectuate the equivalent of an EAJA refund to Plaintiff—SSA shall disburse to Plaintiff's counsel only a net fee award of \$18,960.32. SO ORDERED. Dated: May 22, 2026

MATTHEW J. SHARBAUGH
United States Magistrate Judge 5

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