

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Sommer v. Sullivan

Sommer v. Sullivan, 898 F.2d 895 (2d Cir. 1990) · Decided March 20, 1990

SUMMARY

Pro se incarcerated litigant cannot recover attorney's fees under § 206(b) of the Social Security Act because that provision requires representation by an attorney and payment from past-due benefits. The Equal Access to Justice Act also precludes fees for pro se litigants, at least when incarcerated, as they cannot demonstrate forgone income from "lawyering." The Second Circuit affirmed denial of fees, following its precedent under the Freedom of Information Act.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
JURISDICTION	Federal
DECIDED	March 20, 1990
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the September 29, 1989, order of the District Court for the Northern District of New York (Neal P. McCurn, Chief Judge), denying his motion for attorney's fees.
PRECEDENTIAL VALUE	published
PARTIES	Samuel L. Sommer v. Sullivan

TOPICS

attorney fees civil procedure appellate procedure

PRACTICE AREAS

Social Security Law, Attorney Fees, Civil Procedure

QUESTIONS PRESENTED

- Whether a pro se litigant is entitled to attorney's fees under section 206(b) of the Social Security Act.
- Whether a pro se litigant is entitled to attorney's fees under the Equal Access to Justice Act.
- Whether a pro se litigant is entitled to attorney's fees under 42 U.S.C. § 1988.

HOLDINGS

1. No, because the statute requires representation by an attorney and the fee is paid from past-due benefits, which cannot benefit a pro se litigant.
2. No, because the EAJA provides for 'reasonable attorney fees' and pro se litigants, especially incarcerated ones, cannot demonstrate that their 'lawyering' caused them to forgo regular income, as per the Second Circuit's decision in Crooker.

KEY QUOTATIONS

“The fee request was properly denied. Section 206(b) of the Social Security Act is plainly unavailable.” (895)

“Under the rationale of our Crooker decision, Sommer, an incarcerated prisoner, is not entitled to any attorney’s fee for his pro se “lawyering.”” (896)

FACTUAL BACKGROUND

Sommer, an incarcerated pro se litigant, sued the Social Security Administration and achieved some success. He then sought attorney's fees under various statutes. The district court denied the motion.

PROCEDURAL HISTORY

Sommer, an incarcerated pro se litigant, achieved some success in litigation against the Social Security Administration and sought fees under section 206(b) of the Social Security Act, the EAJA, and arguably 42 U.S.C. § 1988. The district court denied the motion. Sommer appealed.

DISPOSITION

affirmed

CASES CITED

- Merrell v. Block, 809 F.2d 639, 641 (9th Cir. 1987)
- Crooker v. Environmental Protection Agency, 763 F.2d 16, 17 (1st Cir. 1985)
- Crooker v. U.S. Dep't of the Treasury, 684 F.2d 48 (2d Cir. 1980)