

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Suzi Marie H. v. Frank Bisignano

Suzi Marie H. · No. 22-cv-1963-WQH-AHG · Decided July 17, 2025

SUMMARY

The United States District Court for the Southern District of California granted Plaintiff’s counsel’s motion for attorney fees under 42 U.S.C. § 406(b) in the amount of \$15,000. The court found the requested fee reasonable based on the contingent-fee agreement, the favorable result obtained, the hours expended, and the absence of fraud, overreach, substandard performance, or undue delay. Because counsel had previously received \$5,500 in EAJA fees, the court ordered counsel to refund that amount to the plaintiff.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	William Q. Hayes
JURISDICTION	United States District Court for the Southern District of California
DECIDED	July 17, 2025
DOCKET	22-cv-1963-WQH-AHG
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff's counsel moved under 42 U.S.C. § 406(b) for an award of attorney fees after the court reversed the Commissioner's denial of disability benefits and remanded for further administrative proceedings, resulting in an award of past-due benefits.
STANDARD OF REVIEW	The court reviewed the requested § 406(b) fee for reasonableness, beginning with the lawful contingent-fee agreement and considering whether the fee was excessive in relation to the time expended and benefits obtained, or warranted reduction for substandard performance or delay.
PRECEDENTIAL VALUE	Unpublished district court order; precedential status not stated
PARTIES	Suzi Marie H. v. Frank Bisignano, Commissioner of Social Security

TOPICS

judicial review of agency action

administrative law

attorney fees

remedies

civil procedure

PRACTICE AREAS

Social Security

administrative law

attorney fees

civil procedure

QUESTIONS PRESENTED

1. Whether the requested \$15,000 attorney-fee award was reasonable under 42 U.S.C. § 406(b).
2. Whether counsel was required to refund the previously awarded \$5,500 in EAJA fees to Plaintiff.

HOLDINGS

1. The requested \$15,000 fee was reasonable under 42 U.S.C. § 406(b) and should be awarded.
2. Counsel must refund the \$5,500 EAJA fee previously awarded to Plaintiff.

KEY QUOTATIONS

“The court may properly reduce the fee for substandard performance, delay, or benefits that are not in proportion to the time spent on the case.” (Discussion)

“IT IS HEREBY ORDERED that the Motion for Attorney’s Fees (ECF No. 26) is granted. Fees in the amount of \$15,000.00 are awarded to Plaintiff’s Counsel pursuant to 15 U.S.C. § 406(b).” (Conclusion)

FACTUAL BACKGROUND

Plaintiff's counsel represented her in federal court in an action challenging the denial of disability benefits. After the court remanded the case, the ALJ found Plaintiff disabled and awarded approximately \$73,330.90 in past-due benefits. Counsel reported expending 26.65 hours on the federal litigation and sought \$15,000 in § 406(b) fees, while having previously received a \$5,500 EAJA award that had to be refunded to Plaintiff.

PROCEDURAL HISTORY

Plaintiff filed an action seeking review of the Commissioner’s denial of disability benefits. The court adopted a magistrate judge's recommendation, reversed the denial, and remanded for further proceedings. On remand, the ALJ found Plaintiff disabled and awarded approximately \$73,330.90 in past-due benefits. The court had previously awarded \$5,500 in EAJA fees, and Plaintiff’s counsel subsequently sought \$15,000 under § 406(b).

DISPOSITION

other

REMAND INSTRUCTIONS

The Commissioner was directed to certify the \$15,000 fee. Counsel was directed to refund the \$5,500 EAJA fee to Plaintiff.

CASES CITED

- *Gisbrecht v. Barnhart*, 535 U.S. 789 (2002)
- *Culbertson v. Berryhill*, 586 U.S. 53 (2019)
- *Crawford v. Astrue*, 586 F.3d 1142 (9th Cir. 2009)

OPINION

Hale v. Kijakazi

PER CURIAM.

1 2 3 4 5

6 UNITED STATES DISTRICT COURT

7 SOUTHERN DISTRICT OF CALIFORNIA

8 9 SUZI MARIE H., Case No.: 22-cv-1963-WQH-AHG Plaintiff,

10 ORDER

v. 11

12 FRANK BISIGNANO,

Commissioner of Social 13 Security, 14 Defendant. 15 HAYES, Judge: 16 The matter before the Court is the Motion for Attorney Fees Pursuant to 42 U.S.C. 17 § 406(b) (“Motion for Attorney’s Fees”) filed by Petitioner, Lawrence D. Rohlfing 18 (“Plaintiff’s Counsel” or “Rohlfing”), attorney for Plaintiff Suzi Marie H. (“Plaintiff”). 19 (ECF No. 26.) 20

I. PROCEDURAL BACKGROUND

21 On December 12, 2022, Plaintiff filed a Complaint seeking judicial review of 22 Defendant’s final denial of Plaintiff’s administrative application for disability benefits 23 under the Social Security Act. (ECF No. 1.) 24 25 26 27 1 On May 7, 2025, Frank Bisignano became the Commissioner of Social Security. He is automatically 28 1 On August 15, 2023, the parties filed the Joint Motion for judicial review of the 2 issues in this case. (ECF No. 19.) 3 On March 5, 2024, Magistrate Judge Allison H. Goddard issued a Report and 4 Recommendation recommending that the Court reverse the Commissioner of Social 5 Security’s (“Commissioner” or “Defendant”) denial of disability benefits and remand the 6 case for further administrative proceedings. (ECF No. 20.) On March 28, 2024, the Court 7 adopted the Report and Recommendation in its entirety, reversed the Commissioner’s 8 denial of disability benefits, and remanded the case for further administrative proceedings. 9 (ECF No. 21.) 10 On April 26, 2024, the parties filed the Joint Motion for the Award and Payment of 11 Attorney Fees and Expenses Pursuant to the Equal Access to Justice Act, 28 U.S.C. 12 § 2412(d) and Costs Pursuant to 28 U.S.C. § 1920 (“Joint Motion for EAJA Fees”). (ECF

13 No. 23.) On April 30, 2024, the Court issued an Order granting the Joint Motion for EAJA

14 Fees and awarding Plaintiff attorney’s fees and expenses in the amount of \$5,500.00 and 15 costs in the amount of \$402.00. (ECF No. 24.) 16 On remand, the Administrative Law Judge (“ALJ”) found that Plaintiff is disabled 17 and granted Plaintiff’s application for benefits, entitling

her to approximately \$73,330.90 18 of past due benefits. (ECF No. 26 at 5; ECF No. 26-3 at 1–2.) 19 On June 9, 2025, Plaintiff’s Counsel filed the Motion for Attorney’s Fees, requesting 20 a fee of \$15,000.00. (ECF No. 26.) On June 23, 2025, Defendant filed a Response to the 21 motion, in which Defendant “neither supports nor opposes counsel’s request for attorney’s 22 fees under 42 U.S.C. § 406(b).” (ECF No. 29 at 2.) 23 24 25 2 Plaintiff’s Counsel states that the Commissioner determined that Plaintiff was entitled to receive “approximately \$73,330.90 in past due benefits.” (ECF No. 26 at 5.) Although Defendant’s Notice of 26 Award does not explicitly state the total amount of past due benefits owed to Plaintiff, the Notice of Award states that Defendant “withheld \$18,332.75 from [Plaintiff’s] past due benefits” and that Defendant 27 “usually withhold[s] 25 percent of past due benefits in order to pay the approved representative’s fee.” (ECF No. 26-3 at 2.) The Court infers that Plaintiff’s Counsel calculated Plaintiff’s past due benefits based 28

1 II. CONTENTIONS

2 Plaintiff’s Counsel requests an award of fees in the amount of \$15,000.00 in 3 connection with his representation of Plaintiff before this Court. (ECF No. 26 at 5.) 4 Plaintiff’s Counsel contends that the fee is based on “20.5% of the past due benefits paid 5 or payable to [Plaintiff],” which is “reasonable considering the services expended and 6 results achieved.” Id. at 7. Plaintiff’s Counsel contends that, in total, his firm expended 7 26.65 hours on Plaintiff’s case, which was specifically comprised of 12.3 hours of attorney 8 time, 10 hours of law clerk time, and 4.35 hours of paralegal time. Id. at 5, 13. Plaintiff’s 9 Counsel contends that his firm was able to secure a favorable decision from this Court after 10 efficiently preparing the Joint Motion that resulted in the Magistrate Judge’s Report and 11 Recommendation, the Order adopting the Report and Recommendation, and the Judgment 12 remanding this action for further administrative proceedings. Id. at 6–7. Plaintiff’s Counsel 13 contends that he seeks an effective hourly rate of \$563.00 for his firm’s efforts. Id. at 7. 14 Plaintiff’s Counsel contends that the requested fee award is also justified based upon the 15 delay in payment, considering that Plaintiff initiated this action in this Court on December 16 12, 2022, the ALJ’s decision on remand was not entered until June 3, 2025, and Plaintiff’s 17 Counsel has received only the \$5,500.00 EAJA fee in the interim. Id. at 14. 18 Plaintiff’s Counsel contends that he entered into a retainer agreement with Plaintiff 19 on November 29, 2022, wherein Plaintiff agreed to pay Rohlfing’s firm 25% of her past 20 due benefits in the event of an award. Id. at 8; see also ECF No. 26-1 at 1. Plaintiff’s 21 Counsel contends that, although the retainer agreement “calls for a separate calculation of 22 fees under § 406(a) and § 406(b),” “Rohlfing exercises billing discretion to limit the 23 aggregate of all fees received to 25% of the past due benefits, the only withholding the 24 Commissioner makes.” (ECF No. 26 at 8.)

25 III. DISCUSSION

26 “Fees for representation of individuals claiming Social Security old-age, survivor, 27 or disability benefits, both at the administrative level and in court, are governed by ... 42 28 U.S.C. §

406.” *Gisbrecht v. Barnhart*, 535 U.S. 789, 793 (2002). “The statute deals with 1 the administrative and judicial review stages discretely: § 406(a) governs fees for 2 representation in administrative proceedings; § 406(b) controls fees for representation in 3 court.” *Id.* at 794. Under § 406(b), “a court may allow ‘a reasonable fee ... not in excess of 4 25 percent of the ... past-due benefits’ awarded to the claimant,” payable out of the amount 5 of the past-due benefits. *Id.* at 795 (quoting 42 U.S.C. § 406(b)(1)(A)). This “25% cap in 6 § 406(b)(1)(A) applies only to fees for court representation, and not to the aggregate fees 7 awarded under §§ 406(a) and (b).” *Culbertson v. Berryhill*, 586 U.S. 53, 62 (2019). 8 “[A] district court charged with determining a reasonable fee award under 9 § 406(b)(1)(A) must respect ‘the primacy of lawful attorney-client fee agreements,’ 10 ‘looking first to the contingent-fee agreement, then testing it for reasonableness.’” 11 *Crawford v. Astrue*, 586 F.3d 1142, 1148 (9th Cir. 2009) (internal citations omitted) 12 (quoting *Gisbrecht*, 535 U.S. at 793, 808). “The court may properly reduce the fee for 13 substandard performance, delay, or benefits that are not in proportion to the time spent on 14 the case.” *Id.* at 1151. “The attorney bears the burden of establishing that the fee sought is 15 reasonable.” *Id.* at 1148. 16 As an initial matter, there is no evidence that Plaintiff’s Counsel engaged in fraud or 17 overreach in making the retainer agreement or provided substandard representation to 18 Plaintiff. No reduction for dilatory conduct is warranted because the Court finds that 19 Plaintiff’s Counsel “caused no excessive delay which resulted in an undue accumulation 20 of past-due benefits.” *Crawford*, 586 F.3d at 1151. Plaintiff’s Counsel provided effective 21 representation in this case and obtained a favorable result for his client. Additionally, the 22 requested fees are “significantly lower than the fees bargained for in the [retainer] 23 agreement[.]” and are not “excessively large in relation to the benefits achieved.” *Id.* 24 Plaintiff’s Counsel states that his firm expended 26.65 hours litigating Plaintiff’s 25 case before this Court. (ECF No. 26 at 5.) The effective hourly rate requested is \$563.00.

26 *Id.* at 10. Plaintiff’s Counsel contends that a baseline lodestar for this action would amount 27 to \$17,413.00—based upon hourly rates of \$1,141.00 per hour for attorney time, \$250.00 28 per hour for law clerk time, and \$200.00 per hour for paralegal time—but Plaintiff’s 1 || Counsel is requesting a fee award of only \$15,000.00. /d. at 13. The Court finds that both 2 ||the amount of time spent litigating this action and the requested rate are in line with 3 || precedent in this Circuit and do not justify a reduction in the fee award. See, e.g., *Crawford*, 4 F.3d at 1152 (granting fee awards of \$21,000.00, \$11,500.00, and \$24,000.00 for 19.5, 5 ||17.45, and 26.9 hours of attorney time respectively). The Court concludes that the 6 ||requested fee of \$15,000.00 is reasonable in this case. 7 The Court previously granted Plaintiff’s Counsel \$5,500.00 in fees under the EAJA. 8 || “Fee awards may be made under both [the EAJA and § 406(b)], but the claimant’s attorney 9 refund to the claimant the amount of the smaller fee.” *Gisbrecht*, 535 U.S. at 796. 10 || Accordingly, Plaintiff’s Counsel must refund to Plaintiff the \$5,500.00 in EAJA fees 11 || previously awarded by the Court.

12 CONCLUSION

13 IT IS HEREBY ORDERED that the Motion for Attorney's Fees (ECF No. 26) is 14 || granted. Fees in the amount of \$15,000.00 are awarded to Plaintiff's Counsel pursuant to 15 U.S.C. § 406(b). The Commissioner is directed to certify the fee of \$15,000.00. 16 IT IS FURTHER ORDERED that Plaintiff's Counsel shall refund to Plaintiff the 17 || \$5,500.00 in EAJA fees previously awarded by the Court. 18 ||Dated: July 15, 2025 BME: Me Z. Ma 19 Hon. William Q. Hayes 0 United States District Court 21 22 23 24 25 26 27 28