

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
OKLAHOMA

Mark Anthony Slover v. Commissioner of the Social Security
Administration

Slover · No. CIV-22-079-JAR · Decided May 12, 2026

SUMMARY

The United States District Court for the Eastern District of Oklahoma granted counsel’s motion for attorney fees under 42 U.S.C. § 406(b) in a Social Security disability appeal. The court awarded \$11,973.75, payable from withheld past-due benefits, and directed counsel to refund the smaller of the EAJA award or the § 406(b) award to the plaintiff’s estate. The court found the fee request reasonable and timely under applicable Tenth Circuit precedent.

CASE DETAILS

COURT	United States District Court for the Eastern District of Oklahoma
WRITING FOR THE COURT	Jason A. Robertson
JURISDICTION	United States District Court for the Eastern District of Oklahoma
DECIDED	May 12, 2026
DOCKET	CIV-22-079-JAR
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff's counsel moved under 42 U.S.C. § 406(b) for an award of attorney fees after successfully obtaining reversal and remand of the Commissioner's adverse Social Security decision and subsequent payment of past-due benefits.
STANDARD OF REVIEW	The court reviewed the contingency-fee arrangement and contemporaneous time and expense records to determine whether the requested fee would produce a reasonable result in the particular case. It also considered whether the request was filed within a reasonable time under Fed. R. Civ. P. 60(b)(6).
PRECEDENTIAL VALUE	Unknown
PARTIES	Mark Anthony Slover v. Commissioner of the Social Security Administration

TOPICS

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

PRACTICE AREAS

Social Security law administrative law attorney fees civil procedure

QUESTIONS PRESENTED

1. Whether counsel's requested fee of \$11,973.75 was permissible and reasonable under 42 U.S.C. § 406(b).
2. Whether the § 406(b) fee request was timely under Fed. R. Civ. P. 60(b)(6).
3. Whether counsel was required to refund to Plaintiff's estate the smaller of the EAJA award and the § 406(b) award.

HOLDINGS

1. The requested \$11,973.75 fee was permissible and reasonable because it did not exceed the 25% contingency-fee limit, was consistent with the fee agreement, and was supported by reasonable and necessary time and expense records in light of the result obtained.
2. The fee request was timely because it was filed within a reasonable time after the Commissioner's November 4, 2025 Notice of Award.
3. Counsel must refund to Plaintiff's estate the smaller of the EAJA fees previously awarded and the § 406(b) fees awarded in this decision.

KEY QUOTATIONS

“The only condition upon the full award of 25% is a requirement that the court review contingency fee arrangements “to assure that they yield reasonable results in particular cases.””

“To that end, any fee request pursued under §406(b) should be filed “within a reasonable time of the Commissioner’s decision awarding benefits.””

FACTUAL BACKGROUND

Counsel represented Plaintiff in an appeal from an adverse Social Security benefits decision under a contingency-fee agreement providing for 25% of any past-due benefits. The court previously reversed and remanded the administrative decision, and Plaintiff was later found disabled for a closed period, resulting in \$57,729.00 in past-due benefits. Plaintiff died during the proceedings, and his brother was substituted on behalf of the estate. Counsel had already received an EAJA award of \$6,741.50 and sought \$11,973.75 under § 406(b).

PROCEDURAL HISTORY

Counsel appealed an adverse administrative decision, and this Court previously reversed and remanded the decision for further proceedings. On remand, Plaintiff was found disabled for a closed period and his estate was awarded \$57,729.00 in past-due benefits. After the Commissioner issued a Notice of Award on November 4,

2025, counsel filed a § 406(b) fee request on February 26, 2026. The court granted the request for \$11,973.75 and directed payment from withheld past-due benefits, subject to a refund of the smaller EAJA award to Plaintiff's estate.

DISPOSITION

other

CASES CITED

- *Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002)
- *Wrenn v. Astrue*, 525 F.3d 931, 937-938 (10th Cir. 2008)
- *McGraw v. Barnhart*, 450 F.3d 493, 505 (10th Cir. 2006)
- *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986)

OPINION

Slover

PER CURIAM.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF OKLAHOMA

MARK ANTHONY SLOVER,)

) Plaintiff,)) v.) Case No. CIV-22-079-JAR)

COMMISSIONER OF THE)

SOCIAL SECURITY)

ADMINISTRATION,)

) Defendant.)

OPINION AND ORDER

This matter comes before this Court on Motion for Attorney Fees Under 42 U.S.C. § 406(b) filed by Gayle L. Troutman with the firm Troutman and Troutman, the attorney of record for Plaintiff (Docket Entry No. 27). Counsel requests that she be awarded fees for legal work pursuant to 42 U.S.C. § 406(b) in the amount of \$11,973.75. Counsel was employed by Plaintiff to appeal the adverse decision rendered by Administrative Law Judge presiding over the request for benefits. To that end, Counsel entered into a contract for compensation with Plaintiff, providing for the payment of a fee equal to 25% of any past due benefits ultimately awarded to Plaintiff. Such contracts are recognized as valid under the prevailing case authority. *Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002). Counsel fully briefed Plaintiff's position in this appeal resulting in a decision from this Court reversing and remanding the ALJ's decision for further proceedings. Consequently, Plaintiff was successful in this appeal. As a result, Plaintiff was awarded attorney's fees in accordance with the Equal Access to Justice Act ("EAJA") for the efforts before this Court in the amount of \$6,741.50. In the interim, Plaintiff died and his brother was substituted as

Plaintiff on behalf of his estate. On remand, Plaintiff was determined to have been disabled for a closed period and his estate was awarded past due benefits of \$57,729.00 for July, 2018 through March, 2022. The amount awarded to counsel for successfully prosecuting an appeal of a denial of Social Security benefits and obtaining benefits for a claimant may not exceed 25% of past due benefits. 42 U.S.C. § 406(b)(1)(A). As in this case, Defendant is authorized to withhold up to 25% of the past due benefits awarded to a claimant for payment directly to the claimant's attorney. 42 U.S.C. § 406(a)(4). The Tenth Circuit Court of Appeals determined that the 25% amount is separate and apart from the amount awarded at the agency level under 42 U.S.C. § 406(a). *Wrenn v. Astrue*, 525 F.3d 931, 937-938 (10th Cir. 2008). The only condition upon the full award of 25% is a requirement that the court review contingency fee arrangements "to assure that they yield reasonable results in particular cases." *Id.* at 938 (citations omitted). Counsel's requested fees do not exceed either the amount contracted for in the contingency fee agreement or the limitations of §406(b). Defendant generally does not take a position on awarding the amount requested, stating that the Social Security Administration has no financial stake in the result. Despite the fact the source for Counsel's compensation is a contingency fee contract, this Court has reviewed the contemporaneous time and expense records based upon the admonishment of the Tenth Circuit to do so and finds the time expended to be reasonable and necessary in consideration of the result obtained. This Court has evaluated Counsel's request for its timeliness. In seeking an award under § 406(b), an attorney is required to employ the provisions of Fed. R. Civ. P. 60(b)(6). *McGraw v. Barnhart*, 450 F.3d 493, 505 (10th Cir. 2006). While relief under this rule is considered extraordinary and reserved for exceptional circumstances, substantial justice is served by permitting its use in the circumstance faced by counsel in seeking these fees. *Id.* To that end, any fee request pursued under §406(b) should be filed "within a reasonable time of the Commissioner's decision awarding benefits." *Id.* (citation omitted). In this case, Notice of Award was issued by Defendant on November 4, 2025. Counsel filed her request for compensation on February 26, 2026. This Court cannot find the delay which occurred in this case warrants the draconian result of denying an award of fees. Therefore, the request is considered timely. IT IS THEREFORE ORDERED that Motion for Attorney Fees Under 42 U.S.C. § 406(b) filed by Gayle L. Troutman with the firm Troutman and Troutman, the attorney of record for Plaintiff (Docket Entry No. 27) is hereby GRANTED. Plaintiff's counsel is awarded fees in the amount of \$11,973.75. Defendant is directed to pay this fee directly to counsel from the amount of past due benefits withheld for that purpose. In addition, Plaintiff's counsel shall refund to Plaintiff's estate the smaller amount between any EAJA fees already awarded and the § 406(b) fees awarded in this decision to Plaintiff. *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986). IT IS SO ORDERED this 12th day of May, 2026. _____

JASON A. ROBERTSON

UNITED STATES MAGISTRATE JUDGE

