UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

E.P. v. Frank Bisignano

No. 22-cv-05830-VKD (N.D. Cal. Dec. 31, 2025) · No. 22-cv-05830-VKD · Decided December 31, 2025

SUMMARY

The United States District Court for the Northern District of California granted counsel's motion for attorneys' fees under 42 U.S.C. § 406(b) following a favorable Social Security disability determination on remand. The court awarded $35,200 to counsel under a contingency-fee agreement, finding the fee reasonable and within the statutory 25% limit. The court also found no need to require counsel to refund the previously awarded $8,200 in EAJA fees because those funds had been offset against the claimant's debt.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Virginia K. DeMarchi
JURISDICTION	United States District Court for the Northern District of California
DECIDED	December 31, 2025
DOCKET	22-cv-05830-VKD
DISPOSITION	other
PROCEDURAL POSTURE	Following a remand in a Social Security benefits action, plaintiff's counsel moved under 42 U.S.C. § 406(b) for an award of attorney's fees pursuant to a contingency-fee agreement.
STANDARD OF REVIEW	The court independently reviewed the contingent-fee agreement and the requested fee for reasonableness under 42 U.S.C. § 406(b), considering the character of the representation, the results achieved, the time records, and whether counsel engaged in substandard or dilatory conduct.
PRECEDENTIAL VALUE	Unknown; unpublished district court order

TOPICS

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

PRACTICE AREAS

Social Security | administrative law | attorney fees | civil procedure

QUESTIONS PRESENTED

1. Whether the requested $35,200 attorney's-fee award was reasonable under 42 U.S.C. § 406(b) and the contingency-fee agreement.
2. Whether counsel was required to refund the previously awarded $8,200 EAJA fee to E.P.

HOLDINGS

1. The requested $35,200 fee was reasonable and could be awarded under § 406(b) because it was within the 25-percent statutory limit, was supported by a valid contingency-fee agreement, reflected successful representation, and was not shown to result from substandard or dilatory conduct.
2. Under the circumstances presented, counsel was not required to refund the prior $8,200 EAJA award because counsel stated that he had not received those funds, which had been offset by the Treasury Department against E.P.'s debt.

KEY QUOTATIONS

> *"Rather, § 406(b) calls for court review of such arrangements as an independent check, to assure that they yield reasonable results in particular cases."* (at 2)

> *"Fees resulting from a contingent fee agreement are unreasonable and subject to reduction by the court "if the attorney provided substandard representation or engaged in dilatory conduct in order to increase the accrued amount of past-due benefits, or if the 'benefits are large in comparison to the amount of time counsel spent on the case.'""* (at 3)

FACTUAL BACKGROUND

E.P. retained Francesco Benavides under a contingency-fee agreement providing for a fee of 25% of past-due benefits awarded after reversal of an unfavorable administrative decision. Counsel represented E.P. in the district-court appeal, which resulted in a remand, and the Commissioner later found E.P. disabled as of August 31, 2018. The agency determined that E.P. was entitled to $177,954.00 in past-due benefits. Counsel sought $35,200 under § 406(b), had worked 34.6 hours on the appeal, and stated that the previously awarded $8,200 EAJA fee had not been received because it was offset against E.P.'s debt.

PROCEDURAL HISTORY

E.P. sought review of an unfavorable Commissioner of Social Security decision. The court granted in part and denied in part the parties' summary-judgment motions, remanded for further administrative proceedings, and entered judgment for E.P. On remand, the Commissioner found E.P. disabled and the Social Security Administration awarded $177,954.00 in past-due benefits. The court had previously approved an $8,200 EAJA fee award, which counsel stated was offset against E.P.'s debt. Counsel then sought $35,200 under § 406(b), and the court granted the motion.

DISPOSITION

other

CASES CITED

- Crawford v. Astrue, 586 F.3d 1142, 1144 n.3 (9th Cir. 2009)
- Gisbrecht v. Barnhart, 535 U.S. 789, 793, 796, 806-08 (2002)
- Butler v. Colvin, No. 3:14-cv-02050-LB, 2017 WL 446290, at *1 (N.D. Cal. Feb. 2, 2017)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 SAN JOSE DIVISION 7 8 E.P., Case No. 22-cv-05830-VKD 9 Plaintiff, ORDER GRANTING PLAINTIFF'S 10 v. COUNSEL’S MOTION FOR ATTORNEYS’ FEES 11 FRANK BISIGNANO, Re: Dkt. No. 25 Defendant. 12 13 14 Plaintiff E.P. filed this action for review of an unfavorable decision by the Commissioner 15 of Social Security (“Commissioner”).1 The Court granted in part and denied in part E.P.’s and the 16 Commissioner’s respective summary judgment motions, remanded the matter for further 17 administrative proceedings, and entered judgment for E.P.

Dkt. Nos. 21, 22. The Court 18 subsequently granted the parties’ stipulation to award attorneys’ fees in the amount of $8,200 to 19 E.P.’s counsel, Francesco Benavides, pursuant to the Equal Access to Justice Act (“EAJA”). Dkt. 20 No. 24.

In August 2025, following remand, the Commissioner issued a fully favorable decision, 21 finding that E.P. was disabled since August 31, 2018. Dkt. No. 25-2 at ECF 11. In November 22 2025, the Social Security Administration issued a notice, informing E.P. that she is entitled to 23 past-due benefits in the amount of $177,954.00. Id. at ECF 3; see also Dkt. No. 25 (Benavides 24 Declaration ¶¶ 3, 4).

25 Mr. Benavides now moves for attorneys’ fees pursuant to 42 U.S.C. § 406(b). Dkt. No. 25. 26 27 1 Frank Bisignano, Commissioner of the Social Security Administration, is substituted for his 1 He seeks an award of $35,200.00 pursuant to a contingency fee agreement with E.P. That 2 agreement provides that if E.P. is successful following an appeal, then the agreed-upon fee for Mr. 3 Benavides’s work in this Court is “25% of [E.P.]’s past due benefits awarded to [E.P.] upon 4 reversal of any unfavorable ALJ decision.” Dkt.

No. 25-3.2 5 When a district court awards fees under both the EAJA and § 406(b), “‘the claimant’s 6 attorney must refund to the claimant the amount of the smaller fee.’” Crawford v. Astrue, 586 7 F.3d 1142, 1144 n.3 (9th Cir. 2009) (quoting Gisbrecht v. Barnhart, 535 U.S. 789, 796 (2002)). 8 However, Mr. Benavides avers that he did not receive payment of the $8,200.00 in attorneys’ fees 9 previously awarded under the EAJA because the Treasury Department used those funds to offset a 10 debt owed by E.P.

See Dkt. No. 25 (Benavides Declaration ¶¶ 5, 6); Dkt. No. 25-5. 11 Mr. Benavides avers that he served E.P. with a copy of the present motion for fees and 12 supporting papers via certified mail. See Dkt. No. 25 at ECF 8.

The Court has received no 13 objection or response from E.P. or the Commissioner, and the time for submitting a response has 14 passed. See Civil L.R. 7. The motion is deemed suitable for determination without oral argument. 15 Civil L.R. 7-1(b). Upon consideration of the moving and responding papers, the Court grants Mr. 16 Benavides's motion. 17 I. DISCUSSION 18 When a court renders judgment favorable to a claimant represented by an attorney, "the 19 court may determine and allow as part of its judgment a reasonable fee for such representation, not 20 in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by 21 reason of such judgment[.]" 42 U.S.C. § 406(b)(1)(A).

A court may award such fees even if the 22 court's judgment did not immediately result in an award of past-due benefits. Butler v. Colvin, 23 No. 3:14-cv-02050-LB, 2017 WL 446290, at *1 (N.D. Cal. Feb. 2, 2017). 24 Section 406(b) "does not displace contingent-fee agreements as the primary means by 25 which fees are set for successfully representing Social Security benefits claimants in court." 26 2 Mr. Benavides states that the attorney who represented E.P. at the administrative level received 27 fees in the amount of $9,200.00 under 42 U.S.C. § 406(a).

See Dkt. No. 25 at ECF 2. The total of 1 Gisbrecht, 535 U.S. at 807. "Rather, § 406(b) calls for court review of such arrangements as an 2 independent check, to assure that they yield reasonable results in particular cases." Id. "The 3 statute does not specify how courts should determine whether a requested fee is reasonable" and 4 "provides only that the fee must not exceed 25% of the past-due benefits awarded." Crawford, 5 586 F.3d at 1148; see also Gisbrecht, 535 U.S. at 807 ("Congress has provided one boundary line: 6 Agreements are unenforceable to the extent that they provide for fees exceeding 25 percent of the 7 past-due benefits.").

The attorney seeking fees must show that the fees sought are reasonable for 8 the services rendered. Gisbrecht, 535 U.S. at 807. 9 In determining a reasonable fee award under § 406(b), courts "must respect 'the primacy of 10 lawful attorney-client fee agreements,'... 'looking first to the contingent fee agreement, then 11 testing it for reasonableness.'" Crawford, 586 F.3d at 1148 (quoting Gisbrecht, 535 U.S. at 793, 12 808).

In this context, reasonableness does not depend on lodestar calculations, but upon "the 13 character of the representation and the results the representative achieved." Gisbrecht, 535 U.S. at 14 808. Fees resulting from a contingent fee agreement are unreasonable and subject to reduction by 15 the court "if the attorney provided substandard representation or engaged in dilatory conduct in 16 order to increase the accrued amount of past-due benefits, or if the 'benefits are large in 17 comparison to the amount of time counsel spent on the case.'" Crawford, 586 F.3d at 1148 18 (quoting Gisbrecht, 535 U.S. at 808).

Although the Supreme Court has “flatly rejected [a] lodestar approach,” id., a court may require, “not as a basis for satellite litigation, but as an aid to the court’s assessment of the reasonableness of the fee yielded by the fee agreement,” submission of the requesting attorney’s records of the hours worked and normal hourly billing rate for non-contingent fee cases.

Gisbrecht, 535 U.S. at 808. Mr. Benavides has demonstrated that the requested fees are reasonable for the services rendered. His contingency fee agreement with E.P. provides for fees within the 25% limit imposed by § 406(b). Dkt. No. 25-3. Mr. Benavides is seeking fees in an amount less than 25% of E.P.’s past-due benefits award. He successfully pursued E.P.’s appeal in this Court, and obtained a favorable result in which E.P. received substantial past-due benefits.

Dkt. Nos. 25-1, he engaged in dilatory conduct in order to increase the amount of fees to be awarded. The Court finds no instances of undue delay. Mr. Benavides’s time records, which the Court has reviewed as an aid to the assessment of the reasonableness of the requested fee, indicate that he spent 34.6 hours working on the present appeal. See Dkt.

No. 25-4. Although those records result in a higher hourly rate than the $350-500 hourly rate Mr. Benavides says he currently charges for non-contingency matters, as discussed above, Gisbrecht and Crawford make clear that a lodestar analysis does not drive the evaluation of fees under § 406(b). See Gisbrecht, 535 U.S. at 806; Crawford, 586 F.3d at 1149.

Moreover, the Court recognizes that Mr. Benavides assumed a risk of not recovering fees by representing E.P. on a contingency basis since September 2022. See Dkt. No. 25-3. There is no indication that at that time, Mr. Benavides could have known that E.P. would obtain an order remanding the case for further proceedings and that, years later, the agency ultimately would find that E.P. was entitled to 5 past-due benefits.

Additionally, as noted above, the record indicates that Mr. Benavides received no payment of the previously awarded EAJA attorneys’ fees. Dkt. No. 25-5. Accordingly, the Court finds that the requested fees are reasonable.

Under the circumstances presented, there is no need for an order requiring Mr. Benavides to refund to E.P. 3 the prior $8,200.00 in fees awarded under the EAJA. II. © CONCLUSION Based on the foregoing, Mr. Benavides’s motion for fees pursuant to 42 U.S.C. § 406(b) is granted.

The Court awards $35,200.00 in fees to Mr. Benavides. IT IS SO ORDERED. Dated: December 31, 2025 5 Virginia K. DeMarchi United States Magistrate Judge