

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Nikole Denise Burt v. SSA Commissioner

Burt · No. 22-cv-00441-TSH · Decided January 9, 2026

SUMMARY

The United States District Court for the Northern District of California granted attorney Francesco Benavides's motion for \$15,000 in fees under section 206(b) of the Social Security Act, following a remand and favorable benefits decision for Plaintiff Nikole Denise Burt. The court found the contingent-fee request reasonable and directed counsel to refund the previously awarded \$6,900 in Equal Access to Justice Act fees to the plaintiff.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Thomas S. Hixson
JURISDICTION	United States District Court for the Northern District of California
DECIDED	January 9, 2026
DOCKET	22-cv-00441-TSH
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff sought attorney's fees under section 206(b) of the Social Security Act after the court remanded her Social Security benefits claim and the Commissioner later issued a favorable decision awarding retroactive benefits.
STANDARD OF REVIEW	The court independently reviews a requested § 406(b) fee for reasonableness, including the character of the representation, the results achieved, and whether the requested amount should be reduced for substandard performance, delay, or a fee disproportionate to the time spent.
PRECEDENTIAL VALUE	unpublished district court order; precedential status unknown
PARTIES	Nikole Denise Burt v. SSA Commissioner

TOPICS

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

PRACTICE AREAS

Social Security

attorney's fees

administrative law

civil procedure

QUESTIONS PRESENTED

1. Whether counsel's requested \$15,000 fee under 42 U.S.C. § 406(b) was reasonable and within the statutory 25 percent limit.
2. Whether the § 406(b) award had to be offset by the previously awarded EAJA fees and counsel directed to refund the smaller fee to Plaintiff.

HOLDINGS

1. The requested \$15,000 fee was reasonable under § 406(b) because it was supported by a valid contingent-fee agreement and contemporaneous time records, counsel achieved an excellent result, there was no evidence of substandard performance or disproportionate compensation, and the amount did not exceed 25 percent of Plaintiff's past-due benefits.
2. Because counsel received \$6,900 in EAJA fees, counsel must refund that amount to Plaintiff after receiving the reasonable § 406(b) fee award.

KEY QUOTATIONS

“Even if a fee request under § 406(b) is within the 25 percent statutory limit, the attorney bears the burden of showing that the fee sought is reasonable, and the court is responsible for serving as an “independent check” to ensure the reasonableness of the fee.” (2)

“The court should consider “the character of the representation and the results the representative achieved,” and determine “whether the amount [of fees specified in the contingency fee agreement] need be reduced,” for such reasons as “substandard performance, delay, or benefits that are not in proportion to the time spent on the case.”” (3)

“Here, the Court finds counsel’s § 406(b) request reasonable, and therefore counsel shall refund to Plaintiff the \$6,900 in EAJA fees previously awarded.” (4)

FACTUAL BACKGROUND

Plaintiff's Social Security benefits claim was remanded for further proceedings, after which the Commissioner awarded her retroactive benefits. Twenty-five percent of Plaintiff's past-due benefits, or \$24,772, was withheld for attorney's fees. Plaintiff's contingent-fee agreement allowed counsel to seek up to 25 percent of past-due benefits, and counsel requested \$15,000 based on 35.7 hours of work. Counsel also had previously received \$6,900 under the EAJA.

PROCEDURAL HISTORY

Plaintiff brought an action under 42 U.S.C. § 405(g) challenging the denial of Social Security benefits. On June 2, 2022, the court granted the parties' stipulation to remand for further proceedings and later approved \$6,900 in Equal Access to Justice Act fees. On remand, the Commissioner awarded Plaintiff benefits, and her attorney

moved for \$15,000 in fees under 42 U.S.C. § 406(b). The Commissioner did not oppose the motion, and the court granted it while directing counsel to refund the previously awarded EAJA fees to Plaintiff.

DISPOSITION

other

CASES CITED

- *Gisbrecht v. Barnhart*, 535 U.S. 789, 793, 796, 798 n.6, 805, 807-808 (2002)
- *Russell v. Sullivan*, 930 F.2d 1443, 1446 (9th Cir. 1991)
- *Sorensen v. Mink*, 239 F.3d 1140, 1149 (9th Cir. 2001)
- *Crawford v. Astrue*, 586 F.3d 1142, 1149-1151 (9th Cir. 2009) (en banc)
- *E.P. v. Bisignano*, 2025 WL 3771618, at *2 (N.D. Cal. Dec. 31, 2025)
- *Guttig v. SSA Comm’r*, 2025 WL 3539155, at *2 (N.D. Cal. Dec. 10, 2025)
- 6149710, at *2 (N.D. Cal. Oct. 20, 2020)
- *Villa v. Astrue*, 2010 WL 118454, at *1-*2 (E.D. Cal. Jan. 7, 2010)
- *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)
- *Costa v. Commissioner of Social Security Administration*, 690 F.3d 1132, 1136 (9th Cir. 2012)
- *Hearn v. Barnhart*, 262 F. Supp. 2d 1033, 1037 (N.D. Cal. 2003)
- *Crooks v. Kijakazi*, 2022 WL 1469519, at *2 (N.D. Cal. May 10, 2022)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
NIKOLE DENISE BURT, Case No. 22-cv-00441-TSH 8 Plaintiff, ORDER GRANTING
MOTION FOR 9 v. ATTORNEY’S FEES 10 SSA COMMISSIONER, 11 Defendant. 12 13 I.
INTRODUCTION 14 After Plaintiff Nikole Denise Burt brought this action for review of the
Commissioner of 15 Social Security’s decision to deny benefits, the Court remanded the case, and
the Commissioner 16 subsequently issued a decision in her favor.

Plaintiff’s attorney, Francesco Benavides, now seeks 17 \$15,000 in attorney’s fees under section
206(b) of the Social Security Act, 42 U.S.C. § 406(b). 18 ECF No. 24. For the following reasons,
the Court GRANTS the motion. 19 II. BACKGROUND 20 Plaintiff brought this action for
judicial review under the Social Security Act, 42 U.S.C. § 21 405(g).

On June 2, 2022, the Court granted the parties’ stipulation to remand for further 22 proceedings.
ECF No. 20. The Court subsequently granted the parties’ stipulation for attorney’s 23 fees under
the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, in the amount of \$6,900. 24 ECF No.
23. 25 On remand, the Commissioner granted Plaintiff’s application and awarded retroactive 26
benefits.

Mot., Ex. 1 (Notice of Award), ECF No. 24-1. The notice did not specify the total amount of Plaintiff's back-due award of disability benefits but advised Plaintiff that 25% of her past-due benefits being withheld to pay attorney fees, equating to 25% of the back-due award, was \$24,772. Id. 3 Under a contingent-fee agreement, Plaintiff agreed to pay counsel up to 25% of any past-due benefits award.

Mot., Ex. 3 (Fee Agreement), ECF No. 24-3. Benavides requests a fee of \$15,000. Mot. at 3. The government filed a statement of non-opposition, disclaiming any direct financial stake in the outcome of this motion and affirming its role in fee determination as akin to a "trustee for the claimants." ECF No. 26 at 2 (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 798 n.6 (2002)).

Plaintiff has not filed an objection to the motion for fees and the deadline for doing so has passed. III. LEGAL STANDARD Attorneys handling social security proceedings may seek fees for their work under both the EAJA and the Social Security Act. While the government pays an award pursuant to the EAJA, an award pursuant to § 406 of the Social Security Act is paid out of a successful claimant's past-due benefits.

See 42 U.S.C. § 406(b)(1)(A); *Russell v. Sullivan*, 930 F.2d 1443, 1446 (9th Cir. 1991), abrogated on other grounds by *Sorensen v. Mink*, 239 F.3d 1140, 1149 (9th Cir. 2001). Section 406(b)(1) provides that a federal court that "renders a judgment favorable to a claimant... who was represented before the court by an attorney" may grant the attorney "a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment." In passing § 406, Congress sought to protect attorneys from the nonpayment of fees, while also shielding clients from unfairly large fees.

Gisbrecht, 535 U.S. at 805. The Supreme Court in *Gisbrecht* explained that § 406(b) is meant "to control, not to displace, [contingency] fee agreements between Social Security benefits claimants and their counsel." 535 U.S. at 793. Even if a fee request under § 406(b) is within the 25 percent statutory limit, the attorney bears the burden of showing that the fee sought is reasonable, and the court is responsible for serving as an "independent check" to ensure the reasonableness of the fee.

Id. at 807. Following *Gisbrecht*, the Ninth Circuit has instructed that a § 406(b) fee request should be *Crawford v. Astrue*, 586 F.3d 1142, 1149 (9th Cir. 2009) (en banc) (quoting *Gisbrecht*, 535 U.S. at 2808). The court should consider "the character of the representation and the results the representative achieved," and determine "whether the amount [of fees specified in the contingency fee agreement] need be reduced," for such reasons as "substandard performance, delay, or benefits that are not in proportion to the time spent on the case." Id. at 1151.

The reasonableness determination is not governed by the lodestar method, because "[t]he lodestar method under- compensates attorneys for the risk they assume in representing [social

security] claimants and 8 ordinarily produces remarkably smaller fees than would be produced by starting with the 9 contingent-fee agreement.” Id. at 1150.

However, “the court may require counsel to submit a 10 record of hours spent and a statement of normal hourly billing charges[,]... but only as an aid in 11 assessing the reasonableness of the fee.” Id. (emphasis in original). 12 Additionally, a § 406(b) fee award is offset by any award of EAJA fees.

Thus, if the court 13 awards fees under both the EAJA and § 406(b), “the claimant’s attorney must refund[d] to the 14 claimant the amount of the smaller fee.” *Gisbrecht*, 535 U.S. at 796 (citation omitted). 15 IV. DISCUSSION 16 The Court finds counsel has met his burden to demonstrate the requested fees are 17 reasonable.

First, counsel has presented a valid contingent fee agreement. Mot., Ex. 3. Benavides 18 states he has been practicing Social Security law for approximately 15.5 years and, outside of 19 contingency fee related representation, his hourly rate ranges from \$350 to \$550 per hour. 20 Benavides Decl. ¶¶ 6-7, ECF No. 24.

Second, he has supplied timesheets documenting hours 21 worked. Mot., Ex. 4 (timesheet), ECF No. 24-4. Benavides states he spent 35.7 hours working on 22 this case, leading to an effective hourly rate of \$420.17 per hour. Id.; Benavides Decl. ¶ 9.

Third, 23 there is no evidence that counsel’s work was substandard or that the fee award is disproportionate 24 to the amount of work on the case, and the effective hourly rate is within the range of what courts 25 have approved under § 406(b). See, e.g., *E.P. v. Bisignano*, 2025 WL 3771618, at *2 (N.D. Cal. 26 Dec. 31, 2025) (awarding Mr. Benavides’s fee request that provides an hourly rate of \$1,017.34); 27 *Guttig v. SSA Comm’r*, 2025 WL 3539155, at *2 (N.D.

Cal. Dec. 10, 2025) (awarding Mr. 1 6149710, at *2 (N.D. Cal. Oct. 20, 2020) (awarding fee request that provides an hourly rate of 2 \$1,325.34); *Villa v. Astrue*, 2010 WL 118454, at *1-2 (E.D. Cal. Jan. 7, 2010) (approving § 406(b) 3 fees exceeding \$1,000 per hour and noting: “Reducing § 406(b) fees after *Crawford* is a dicey 4 business”).

Moreover, counsel obtained an excellent result for his client and took on the risk of 5 contingent representation. The Court is mindful of the Ninth Circuit’s instruction that “lawyers 6 are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their 7 fees” because “[t]he payoff is too uncertain.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 8 (9th Cir.

2008). “As a result, courts should generally defer to the ‘winning lawyer’s professional 9 judgment as to how much time he was required to spend on the case.’” *Costa v. Comm’r of Soc. 10 Sec. Admin.*, 690 F.3d 1132, 1136 (9th Cir. 2012) (quoting *Moreno*, 534 F.3d at 1112); see also

11 Hearn v. Barnhart, 262 F. Supp. 2d 1033, 1037 (N.D. Cal. 2003) (“The courts recognize that 12 basing a reasonableness determination on a simple hourly rate basis is inappropriate when an 13 attorney is working pursuant to a reasonable contingency contract for which there runs a 14 substantial risk of loss.”).

As such, the requested fee is also reasonable because of the substantial 15 risk of loss inherently involved in representing Social Security disability claimants. 16 Once the Court determines the fee sought under § 406(b) is reasonable, it must account for 17 the attorney’s fees paid by the Commissioner under the EAJA. *Gisbrecht*, 535 U.S. at 796. 18 “Congress harmonized fees payable by the Government under EAJA with fees payable under § 19 406(b) out of the claimant’s past-due Social Security benefits” by requiring the claimant’s attorney 20 to refund to the claimant the amount of the smaller fee up to the point where the claimant receives 21 100% of the past-due benefits.

Id. Here, the Court finds counsel’s § 406(b) request reasonable, 22 and therefore counsel shall refund to Plaintiff the \$6,900 in EAJA fees previously awarded. See 23 *Crooks v. Kijakazi*, 2022 WL 1469519, at *2 (N.D. Cal. May 10, 2022) (finding § 406(b) request 24 reasonable and directing counsel to refund to client fees previously awarded under the EAJA). 25 V. CONCLUSION 26 For the reasons stated above, the Court GRANTS counsel’s motion for attorney’s fees.

27 The Commissioner is directed to certify fees under 42 U.S.C. § 406(b) in the amount of \$15,000, 1 Plaintiff. 2 IT IS SO ORDERED. 3 4 || Dated: January 9, 2026 THOMAS S. HIXSON 6 United States Magistrate Judge 4 8 9 10 11 12 13 15 QO 16 17 Z 18 19 20 21 22 23 24 25 26 27 28