

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Stella M. v. Frank Bisignano, Commissioner of Social Security

Stella M. · No. 3:22-cv-00109-AHG · Decided January 13, 2026

SUMMARY

The court grants Plaintiff’s counsel’s motion for attorney fees under 42 U.S.C. § 406(b) following a sentence-four remand in a Social Security disability benefits case. The court awards Olinsky Law Group \$13,924.00 from Plaintiff’s past-due benefits and orders counsel to refund the previously awarded \$5,582.45 EAJA fee to Plaintiff.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Allison H. Goddard
JURISDICTION	United States District Court for the Southern District of California
DECIDED	January 13, 2026
DOCKET	3:22-cv-00109-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 remanded the Social Security matter under sentence four of 42 U.S.C. § 405(g), the Commissioner awarded past-due benefits, and the court previously awarded EAJA fees.
STANDARD OF REVIEW	The court reviewed the requested § 406(b) fee for reasonableness, beginning with the lawful contingent-fee agreement and considering the character of the representation, results achieved, substandard performance, delay, and whether the award would constitute a windfall.
PRECEDENTIAL VALUE	unpublished district court order; persuasive value only
PARTIES	Stella M. v. Frank Bisignano, Commissioner of Social Security

TOPICS

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

PRACTICE AREAS

Social Security

Attorney fees

Administrative law

QUESTIONS PRESENTED

1. Whether Plaintiff's counsel was entitled to a reasonable attorney-fee award under 42 U.S.C. § 406(b) after the sentence-four remand resulted in an award of past-due benefits.
2. Whether the requested \$13,924.00 fee was reasonable under the contingent-fee agreement and applicable § 406(b) standards.
3. Whether the EAJA award had to offset the § 406(b) award and be refunded to Plaintiff.

HOLDINGS

1. A court entering judgment favorable to a Social Security claimant may award a reasonable attorney fee under 42 U.S.C. § 406(b), subject to the statutory ceiling of 25 percent of the claimant's past-due benefits.
2. The requested \$13,924.00 § 406(b) fee was reasonable and did not constitute a windfall to counsel.
3. The \$5,582.45 EAJA award offsets the § 406(b) award, and counsel must refund that amount to Plaintiff.

KEY QUOTATIONS

“Within the 25 percent boundary, . . . the attorney for the successful claimant must show that the fee sought is reasonable for the services rendered.” (at 2)

“[A] district court charged with determining a reasonable fee award under § 406(b)(1)(A) must respect ‘the primacy of lawful attorney-client fee agreements,’ . . . ‘looking first to the contingent-fee agreement, then testing it for reasonableness[.]’” (at 2)

“an EAJA award offsets an award under Section 406(b), so that the amount of the total past-due benefits the claimant actually receives will be increased by the EAJA award up to the point the claimant receives 100 percent of the past-due benefits.” (at 6)

FACTUAL BACKGROUND

Plaintiff retained Olinsky Law Group under an agreement providing for a contingency fee of up to 25 percent of past-due benefits. After the federal court remanded the case, the Commissioner awarded Plaintiff \$92,496.00 in past-due benefits. Counsel requested \$13,924.00 under § 406(b), calculated after subtracting a \$9,200.00 hearing-level fee, and agreed to refund the previously awarded \$5,582.45 EAJA fee to Plaintiff.

PROCEDURAL HISTORY

Stella M. filed an action seeking review of the Commissioner's denial of disability and supplemental security income benefits. On January 3, 2023, the court granted the parties' joint motion to remand under sentence four of 42 U.S.C. § 405(g). On remand, the Commissioner awarded \$92,496.00 in past-due benefits, and the court awarded \$5,582.45 in EAJA fees. Plaintiff's counsel then sought \$13,924.00 in § 406(b) fees, subject to an EAJA offset; the court granted the motion.

DISPOSITION

other

REMAND INSTRUCTIONS

The Commissioner was directed to certify payment of \$13,924.00 in § 406(b) fees to Olinsky Law Group from Plaintiff's past-due benefits in accordance with agency policy. Counsel was ordered to refund \$5,582.45 to Plaintiff as the EAJA offset.

CASES CITED

- Crawford v. Astrue, 586 F.3d 1142 (9th Cir. 2009) (en banc)
- Gisbrecht v. Barnhart, 535 U.S. 789 (2002)
- Shultz v. Comm'r of Soc. Sec., No. 17cv1823-CAB-MDD, 2020 U.S. Dist. LEXIS 147006 (S.D. Cal. Aug. 14, 2020)
- Berry v. Saul, No. 16cv1700-MMA-AGS, 2019 WL 6467807 (S.D. Cal. Dec. 2, 2019)
- Patrick S. v. Dudek, No. 23-cv-480-AHG, 2025 WL 642012 (S.D. Cal. Feb. 26, 2025)
- Sergio C. v. Kijakazi, No. 20-cv-2270-AHG, 2023 WL 4240715 (S.D. Cal. June 27, 2023)
- Reddick v. Berryhill, No. 16cv29-BTM-BLM, 2019 WL 1112080 (S.D. Cal. Mar. 11, 2019)
- Kikkert v. Berryhill, No. 14cv1725-MMA-JMA, 2018 WL 3617268 (S.D. Cal. July 30, 2018)
- Likens v. Colvin, No. 11-cv-0407-LAB-BGS, 2014 WL 6810657 (S.D. Cal. Dec. 2, 2014)
- Moreno v. Berryhill, No. 13-cv-8492-PLA, 2018 WL 3490777 (C.D. Cal. July 19, 2018)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 STELLA M., Case No.: 3:22-cv-00109-AHG 12 Plaintiff, ORDER
GRANTING PLAINTIFF'S COUNSEL'S MOTION FOR 13 v. ATTORNEY FEES PURSUANT
TO 14 FRANK BISIGNANO, Commissioner of 42 U.S.C. § 406(b) Social Security, 15 [ECF No.
34] Defendant. 16 17 18 19 20 Before the Court is Plaintiff's counsel's amended motion for
attorney fees pursuant 21 to 42 U.S.C. § 406(b).

ECF No. 34. For the reasons set forth below, the Court GRANTS 22 the motion. 23 I.
BACKGROUND 24 Plaintiff Stella M. ("Plaintiff") filed this action on January 27, 2022, seeking
review 25 of the Commissioner of Social Security's ("Commissioner" or "Defendant") denial of
her 26 application for social security disability and supplemental security income benefits.

ECF 27 No. 1. The parties consented to proceed before a Magistrate Judge. ECF Nos. 16, 19, 21.
28 The administrative record was filed on August 30, 2022. ECF No. 22. The Court set a 1
scheduling order, requiring that a Joint Status Report regarding settlement discussions be 2 filed
by October 28, 2022, and a Joint Motion for Judicial Review of Final Decision of the 3
Commissioner of Social Security be filed by January 27, 2023.

ECF No. 23. On 4 January 3, 2023, the parties filed a Joint Motion to Remand to Social Security 5 Administration. ECF No. 26. On January 3, 2023, the Court granted the motion and 6 remanded the matter back to the Commissioner for further administrative proceedings 7 pursuant to Sentence Four of 42 U.S.C. § 405(g). ECF No. 27. A Clerk's Judgment was 8 entered the same day.

ECF No. 28. On remand, the Commissioner awarded Plaintiff 9 \$92,496.00 in total past due benefits. ECF No. 34-1 at 2; ECF No. 34-3. On April 27, 2023, 10 the Court awarded Plaintiff \$5,582.45 in attorney fees under the Equal Access to Justice 11 Act ("EAJA"), 28 U.S.C. § 2412(d). ECF No. 32. 12 In the instant motion, Plaintiff's counsel seeks an order awarding Olinsky Law 13 Group¹ (Plaintiff's counsel) attorney fees in the amount of \$13,924.00 for representing 14 Plaintiff in this action, offset by the \$5,582.45 in EAJA fees awarded by the Court, for a 15 net award of \$8,341.55.

ECF No. 34-1 at 2–3; see *id.* at 3 ("Petitioner asks this Court to 16 authorize and award 406(b) attorney's fees of \$13,924.00. Upon receipt of payment, 17 Plaintiff's counsel shall refund the EAJA award in the amount of \$5,582.45 to [Plaintiff]"). 18 Plaintiff did not oppose her counsel's request.

The Commissioner has taken no position on 19 the reasonableness of counsel's request. ECF No. 40 at 3 ("The Commissioner has given 20 substantive consideration to the merits of the Motion for § 406(b) fees and found no basis 21 to object. ... the Commissioner neither supports nor opposes Counsel's request for 22 attorney[] fees"). 23 24 25 1 The Court notes that the attorney who filed the instant motion, Melissa A. Palmer, is not listed as an attorney who worked on this matter via the detailed time records submitted.

26 ECF Nos. 34-4, 34-5. Instead, Stuart Barasch, Howard Olinsky, Alex Hobaica, 27 Christopher Milliman, and Daniel Brady were the attorneys who handled the case. *Id.* Hence, instead of the award being addressed to Ms. Palmer, counsel instead requests the 28 1 II. LEGAL STANDARD 2 "Under 42 U.S.C. § 406(b), a court entering judgment in favor of [a social security] 3 claimant who was represented by an attorney 'may determine and allow as part of its 4 judgment a reasonable fee for such representation, not in excess of 25 percent of the total 5 of the past-due benefits to which the claimant is entitled by reason of such judgment.'" 6 *Crawford v. Astrue*, 586 F.3d 1142, 1147 (9th Cir.

2009) (en banc) (quoting 42 U.S.C. 7 § 406(b)(1)(A)). "Within the 25 percent boundary,... the attorney for the successful 8 claimant must show that the fee sought is reasonable² for the services rendered." *Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002). 10 "[A] district court charged with determining a reasonable fee award under 11 § 406(b)(1)(A) must respect 'the primacy of lawful attorney-client fee agreements,'...

12 ‘looking first to the contingent-fee agreement, then testing it for reasonableness[.]’” 13 Crawford, 586 F.3d at 1148 (quoting *Gisbrecht*, 535 U.S. at 793, 808). When determining 14 reasonableness of the fee award, courts must consider “whether the amount need be 15 reduced, not whether the lodestar amount should be enhanced.” Crawford, 586 F.3d at 16 1149.

While there is not a definitive list of factors, courts should consider “the character of 17 the representation and the results the representative achieved.” *Gisbrecht*, 535 U.S. at 808. 18 // 19 20 2 The Court notes that the lodestar calculation does not apply to the instant motion. See 21 *Gisbrecht*, 535 U.S. at 802 (explaining that the lodestar method is applicable to “disputes 22 over the amount of fees properly shifted to the loser in the litigation” whereas “Section 406(b) is of another genre: [i]t authorizes fees payable from the successful party’s 23 recovery”); see also Crawford, 586 F.3d at 1148 (“SSDI attorney[] fees, in contrast, are 24 not shifted.

They are paid from the award of past-due benefits and the amount of the fee, up to 25% of past-due benefits, is based on the agreement between the attorney and the 25 client.”); see, e.g., *Shultz v. Comm’r of Soc. Sec.*, No. 17cv1823-CAB-MDD, 2020 U.S. 26 Dist. LEXIS 147006, at *3–*4 (S.D. Cal. Aug. 14, 2020) (not applying the lodestar calculation, when the motion was not opposed by the Commissioner or plaintiff); *Berry v. 27 Saul*, No. 16cv1700-MMA-AGS, 2019 WL 6467807 at *2 n.2 (S.D.

Cal. Dec. 2, 2019) 28 (same). 1 “The court may properly reduce the fee for substandard performance, delay, or benefits 2 that are not in proportion to the time spent on the case.” Crawford, 586 F.3d at 1151. 3 Finally, “an EAJA award offsets an award under Section 406(b), so that the [amount 4 of the total past-due benefits the claimant actually receives] will be increased by the ... 5 EAJA award up to the point the claimant receives 100 percent of the past-due benefits.” 6 *Gisbrecht*, 535 U.S. at 796.

7 III. DISCUSSION 8 On January 21, 2022, Plaintiff and Olinsky Law Group entered into a Social Security 9 Appeal Federal Court Fee Agreement (“Agreement”). ECF No. 34-2. Pursuant to the 10 Agreement, Plaintiff agreed to pay counsel a contingency-fee of up to 25% of past-due 11 benefits awarded by the Commissioner. Id. 12 The administrative proceedings became final 12 on September 16, 2025, when the Social Security Administration issued its Notice of 13 Award.

See ECF No. 34-3 at 1. Plaintiff’s counsel seeks a total award of \$13,924.00 in 14 attorney fees and bases this fee on 25% of the net payable past due benefits, after the 15 \$9,200.00 awarded to the hearing level representative is subtracted. ECF No. 34-1 at 2.4 16 Counsel suggests that the amount sought in the instant motion is reasonable considering 17 the services expended and results achieved.

Id. at 2 (“Petitioner’s win of a remand hearing 18 from this Court has resulted in a finding establishing that Plaintiff is disabled, and therefore 19 eligible for benefits”). Additionally, if

granted by the Court, this award would then be 20 further reduced by the \$5,582.45 that has already been received in attorney fees under the 21 EAJA. Id. at 3. 22 / / 23 24 25 3 As an initial matter, the Court notes that the contingency fee agreement between Plaintiff and his counsel is within the statutory ceiling.

Compare 42 U.S.C. § 406(b)(1)(A) with 26 ECF No. 34-2. 27 4 Twenty-five percent of \$92,496.00 is \$23,124.00. The hearing level representative 28 received \$9,200.00; and \$23,124.00 minus \$9,200.00 equals \$13,924.00. 1 Upon careful review of the documents submitted, and the applicable law, the Court 2 finds that counsel's fee request is reasonable. Plaintiff's counsel and paralegal expended 3 27.8 hours on this case, which the Court reduced to 26.1 hours.5 Id. at 3; see ECF No. 32 4 at 9.

The de facto hourly rate is \$630.28,6 which falls on the low end of the range that has 5 been approved by courts in similar cases, including in this district. See Crawford, 586 F.3d 6 at 1153 (approving de facto hourly rates of \$519, \$875, and \$902 in 2009); Patrick S., 2025 7 WL 642012, at *2 (approving de facto hourly rate of \$770.35); Sergio C., 2023 WL 8 4240715, at *2 (approving de facto hourly rate of \$681.66); Reddick v. Berryhill, No. 9 16cv29-BTM-BLM, 2019 WL 1112080, at *2–*3 (S.D.

Cal. Mar. 11, 2019) (collecting 10 cases and approving de facto hourly rate of \$1,080.26); Kikkert v. Berryhill, No. 14cv1725- 11 MMA-JMA, 2018 WL 3617268, at *2 (S.D. Cal. July 30, 2018) (approving de facto hourly 12 13 5 While every case is different, the amount of time spent on this case—27.8 hours, 14 comprised of 21.4 hours of attorney work and 6.4 hours of paralegal work—is similar to 15 other cases.

See Patrick S. v. Dudek, No. 23-cv-480-AHG, 2025 WL 642012, at *2 (S.D. Cal. Feb. 26, 2025) (finding that 24.97 hours billed by plaintiff's counsel and 3.7 hours 16 billed by a paralegal a reasonable number of hours); Sergio C. v. Kijakazi, No. 20-cv-2270- 17 AHG, 2023 WL 4240715, at *2 (S.D. Cal. June 27, 2023) (finding that 20.59 hours billed by plaintiff's counsel and 8.75 hours billed by a paralegal a reasonable number of hours); 18 Krebs v. Berryhill, No. 16-cv-3096-JLS-BGS, 2018 WL 3064346, at *2 (S.D.

Cal. June 19 21, 2018) (finding that 21.7 hours billed by plaintiff's counsel and 3.5 hours billed by a paralegal a reasonable number of hours); see also Costa v. Comm'r of Soc. Sec., 690 F.3d 20 1132, 1136 (9th Cir. 2012) (noting “[m]any district courts have noted that twenty to forty 21 hours is the range most often requested and granted in social security cases”).

However, the Court notes that it has already ruled, in its order on the EAJA fee request, that the 21.4 22 hours of attorney work and 6.4 hours of paralegal work in this case were not reasonable. 23 ECF No. 32 at 4–6 (deducting 0.3 hours of clerical attorney work, 0.7 hours of clerical paralegal work, and 0.7 hours of duplicative paralegal work).

As stated in its prior Order, 24 the Court finds that 21.1 hours of attorney time and 5 hours of paralegal time were 25 reasonable in this matter. Id. at 4–6, 9. The Court will therefore analyze the instant fee request using these reduced figures instead. 26 6 Here, the de facto hourly rate is calculated by subtracting the paralegal fee ($\$125.00 \times 27 \text{ 5 hours} = \625.00) from the total $\$13,924.00$ fee requested ($\$13,924.00 - \$625.00 = 28 \text{ } \$13,299.00$), and dividing by 21.1 hours of attorney time.

1 rate of $\$943.55$); *Likens v. Colvin*, No. 11-cv-0407-LAB-BGS, 2014 WL 6810657, at *2 2 (S.D. Cal. Dec. 2, 2014) (approving de facto hourly rate of $\$666.68$). 3 Moreover, “the Court finds that Plaintiff’s counsel assumed a substantial risk of not 4 recovering attorney[] fees. At the time that Plaintiff and h[er] counsel signed the 5 contingency fee agreement, Plaintiff had an unfavorable ruling from the ALJ and had just 6 filed this action for judicial review.” *Shultz*, 2020 U.S. Dist.

LEXIS 147006, at *5–6; see 7 also *Moreno v. Berryhill*, No. 13-cv-8492-PLA, 2018 WL 3490777, at *3 (C.D. Cal. July 8 19, 2018) (“[c]ounsel assumed the risk of nonpayment inherent in a contingency 9 agreement, [and] the fee does not exceed ... the 25 percent statutory cap[.]”). 10 Plaintiff’s counsel has also submitted a billing statement detailing the work 11 performed to litigate this case in federal court.

ECF Nos. 34-4, 34-5, 34-6. There is nothing 12 in the record to suggest substandard performance by counsel, or that counsel delayed this 13 litigation in order to amass more in potential fees. As a result of counsel’s work, Plaintiff 14 received a favorable outcome and a significant award of past-due benefits.

Thus, none of 15 the factors outlined in *Gisbrecht* favor reducing the fee award, and the Court concludes 16 that counsel’s request for attorney fees is reasonable and that it does not constitute a 17 “windfall” to Plaintiff’s counsel. See *Gisbrecht*, 535 U.S. at 808. 18 IV. CONCLUSION 19 For the reasons set forth above, the Court GRANTS Plaintiff’s counsel’s motion for 20 attorney fees pursuant to 42 U.S.C. §406(b).

ECF No. 34. The Court AWARDS Olinsky 21 Law Group § 406(b) attorney fees in the amount of $\$13,924.00$. 22 As discussed above, Olinsky Law Group previously received an EAJA fee award of 23 $\$5,582.45$, (see ECF No. 32), and “an EAJA award offsets an award under Section 406(b), 24 so that the amount of the total past-due benefits the claimant actually receives will be 25 increased by the EAJA award up to the point the claimant receives 100 percent of the past- 26 due benefits.” *Gisbrecht*, 535 U.S. at 796 (internal alterations omitted).

Accordingly, the 27 Commissioner is DIRECTED to certify payment of a fee award of $\$13,924.00$, made 28 payable to the Olinsky Law Group, and delivered to Olinsky Law Group, 250 S. Clinton 1 ||St., Ste 210, Syracuse, NY 13202, out of Plaintiff’s past-due benefits in accordance with 2 ||agency policy.

The Court further ORDERS Plaintiffs counsel to refund Plaintiff 3 \$5,582.45 as an offset for the EAJA fees previously awarded. 4 IT IS SO ORDERED. 5 Dated: January 13, 2026. JpwornH. Xho Honorable Allison H. Goddard 7 United States Magistrate Judge 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28