

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
ILLINOIS, PEORIA DIVISION

Charles Berry v. Commissioner of Social Security

Berry · No. 1:24-cv-1103 · Decided May 28, 2026

SUMMARY

The United States District Court for the Central District of Illinois granted Plaintiff’s unopposed petition for attorney’s fees under 42 U.S.C. § 406(b). The court awarded counsel \$24,447.25, representing 25% of the plaintiff’s past-due benefits, reduced by the previously awarded \$6,509.98 in EAJA fees, for a net award of \$17,937.27. The order was entered on May 28, 2026.

CASE DETAILS

COURT	United States District Court for the Central District of Illinois, Peoria Division
WRITING FOR THE COURT	Jonathan E. Hawley
JURISDICTION	United States District Court for the Central District of Illinois, Peoria Division
DECIDED	May 28, 2026
DOCKET	1:24-cv-1103
DISPOSITION	other
PROCEDURAL POSTURE	Post-remand motion for attorney fees under 42 U.S.C. § 406(b) following reversal of the Commissioner’s decision and remand to the Social Security Administration.
STANDARD OF REVIEW	The court exercises discretion to determine and allow a reasonable attorney fee under 42 U.S.C. § 406(b), considering the contingent-fee agreement, the character of the representation, the results achieved, and whether the past-due benefits are disproportionate to the time spent.
PRECEDENTIAL VALUE	Unpublished, nonprecedential district court order
PARTIES	Charles Berry v. Commissioner of Social Security

TOPICS

- attorney fees
- administrative law
- remedies

PRACTICE AREAS

Social Security

Administrative Law

Attorney Fees

QUESTIONS PRESENTED

1. Whether counsel should receive a reasonable attorney fee under 42 U.S.C. § 406(b) after successfully representing Berry in federal court and obtaining past-due benefits.
2. Whether the fee should be reduced by the EAJA fee previously awarded for the same work.

HOLDINGS

1. The Court may award a reasonable fee for successful federal-court representation under 42 U.S.C. § 406(b), subject to the statutory cap of 25% of the claimant's past-due benefits and the requirement that the fee be reasonable.
2. When counsel receives fees under both § 406(b) and the EAJA for the same work, counsel must refund the smaller fee to the claimant; the Court may instead deduct the prior EAJA award from the § 406(b) award.

KEY QUOTATIONS

“the court may determine and allow as part of its judgment 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” (no page or pin cite)

“but only if, where the claimant’s attorney receives fees for the same work under both 406(b)(1) and the EAJA, the claimant’s attorney refunds to the claimant the amount of the smaller fee.” (no page or pin cite)

FACTUAL BACKGROUND

Berry's counsel represented him in federal court and obtained reversal of the Commissioner's decision, followed by a remand to the Social Security Administration. On remand, Berry was awarded \$97,789.00 in past-due benefits. Berry had agreed to pay counsel 25% of past-due benefits if counsel obtained a favorable federal-court result, and counsel had previously received \$6,509.98 under the EAJA.

PROCEDURAL HISTORY

The Court previously reversed the Commissioner's decision and remanded the matter to the Social Security Administration on August 5, 2024. After remand, Berry received \$97,789.00 in past-due benefits, and the Court awarded counsel \$6,509.98 under the Equal Access to Justice Act. Counsel then filed an unopposed petition for fees under 42 U.S.C. § 406(b), which the Court granted in a net amount of \$17,937.27.

DISPOSITION

other

CASES CITED

- Culbertson v. Berryhill, 139 S. Ct. 517, 522 (2019)
- O'Donnell v. Saul, 983 F.3d 950, 952-53, 957 (7th Cir. 2020)
- Gisbrecht v. Barnhart, 535 U.S. 789, 808 (2002)

OPINION

IN THE UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF ILLINOIS PEORIA DIVISION CHARLES BERRY, Plaintiff, v. Case No. 1:24-cv-1103 COMMISSIONER OF SOCIAL SECURITY, Defendant. Order The Court has reviewed the Plaintiff's Attorney's Unopposed Petition for Attorneys' Fees pursuant to 42 U.S.C. § 406(b). (D. 18).¹ The Plaintiff represents in the Motion that the Defendant neither supports nor opposes counsel's request for attorney's fees.

On August 5, 2024, the Court issued an order reversing the Commissioner's decision and remanding this case back to the Social Security Administration (SSA). On October 21, 2024, the Court ordered the Plaintiff's counsel be awarded attorney's fees in the amount of \$6,509.98 under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. (D. 17). Following remand, the Plaintiff was awarded \$97,789.00 in total past-due benefits.

42 U.S.C. § 406(b)(1) provides that if an attorney successfully represents a claimant in federal court: the court may determine and allow as part of its judgment 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, and the Commissioner of Social Security 1 Citations to the electronic docket are abbreviated as "D. ____ at ECF p. ____." may... certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits..

The Supreme Court has clarified that the "25% cap applies only to fees for representation before the court, not the agency" under § 406(a). Culbertson v. Berryhill, 139 S. Ct. 517, 522 (2019). "[S]o an attorney may ultimately be awarded more than 25% of past-due benefits under §§ 406(a) and (b)(1) combined." O'Donnell v. Saul, 983 F.3d 950, 952 (7th Cir. 2020).

Section 406(b)(2) makes it a misdemeanor for an attorney to charge or otherwise collect a fee for court representation in excess of the amount permitted under § 406(b)(1). However, the "Savings Provision" of the EAJA provides that an attorney does not violate § 406(b)(2) by accepting an EAJA fee in addition to a court fee under § 406(b)(1), "but only if, where the claimant's attorney receives fees for the same work under both 406(b)(1) and the EAJA, the claimant's attorney refunds to the claimant the amount of the smaller fee." Id. at 953 (internal citation omitted).

Section 406(b)(1) vests the Court with discretion to award a reasonable fee and to determine what that fee is. Id. at 957. In making the determination, a court considers the contingent-fee agreement,

the character of representation, the results achieved, and whether the past-due benefits recovered are disproportionate to the amount of time spent on the case.

Gisbrecht v. Barnhart, 535 U.S. 789, 808 (2002). Here, the Plaintiff signed a fee agreement providing he agreed to pay his attorney 25% of past-due benefits if his counsel represented him before a federal court and obtained a favorable outcome.

Accordingly, \$24,447—25% of the Plaintiff's past- due benefits—is a reasonable amount in light of the contingent nature of the recovery, the efficient manner in which counsel handled the Plaintiff's case, the results counsel achieved, and the fact that counsel will not request any additional fees under Section 406(a) for work performed before the SSA.

The Court therefore GRANTS the Plaintiff's Motion for Attorney Fees Pursuant to 42 U.S.C.A. Section 406(b). (D. 18). Attorney Meredith E. Marcus is awarded an attorney's fee under 42 U.S.C. § 406(b) in the net amount of \$17,937.27. This number represents the Plaintiff's counsel's requested Section 406(b) award of \$24,447.25, less the \$6,509.98 the Plaintiff's counsel previously received under the EAJA.² It is so ordered.

Entered on May 28, 2026 s/Jonathan E. Hawley U.S. DISTRICT JUDGE 2 The Plaintiff's counsel requests in the Motion that, rather than reimburse the Plaintiff the amount of EAJA fees, the Court instead deduct the EAJA fee award from the Section 406(b) award.