

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Matthew H. v. Leland Dudek

Matthew H. · No. 21-cv-07897-JSC · Decided April 7, 2025

SUMMARY

The United States District Court for the Northern District of California granted plaintiff’s counsel’s motion for attorney’s fees under 42 U.S.C. § 406(b) following a successful appeal and remand of the denial of Social Security disability benefits. The court approved \$10,143.50 in fees, finding the amount reasonable under the contingency-fee agreement and applicable case law, and ordered counsel to refund \$6,500 in previously awarded EAJA fees to the plaintiff.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Jacqueline Scott Corley
JURISDICTION	United States District Court for the Northern District of California
DECIDED	April 7, 2025
DOCKET	21-cv-07897-JSC
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved under 42 U.S.C. § 406(b) for attorney's fees incurred in successfully obtaining a sentence-four remand of the Commissioner's denial of Social Security disability benefits.
STANDARD OF REVIEW	The court independently reviewed the contingency-fee agreement and the requested fee for reasonableness under 42 U.S.C. § 406(b), considering the representation provided, results achieved, counsel's conduct, the size of the fee relative to the benefits, and the risk assumed.
PRECEDENTIAL VALUE	unpublished
PARTIES	Matthew H. v. Leland Dudek, Acting Commissioner of Social Security

TOPICS

- attorney fees
- judicial review of agency action
- administrative law
- summary judgment
- remedies

PRACTICE AREAS

Social Security

administrative law

attorney fees

QUESTIONS PRESENTED

1. Whether the requested attorney's fee under 42 U.S.C. § 406(b) was reasonable and within the statutory 25-percent limitation.
2. Whether the § 406(b) award had to be offset by the previously awarded EAJA fees.
3. Whether counsel's requested reduction for scheduling delays should be treated as a refund or excluded from the fee award.

HOLDINGS

1. A court may approve a contingency-fee agreement under 42 U.S.C. § 406(b) only after independently reviewing the requested fee for reasonableness; the court approved \$10,143.50 as reasonable because the agreement was within the 25-percent statutory ceiling, counsel achieved a favorable remand and benefits award, there was no substandard or deliberately dilatory representation, the fee was not excessive in relation to the benefits, and counsel assumed substantial risk.
2. An award of § 406(b) attorney's fees must be offset by any EAJA fee award, and counsel must refund the previously awarded \$6,500.00 in EAJA fees to Plaintiff.
3. The court declined to award the additional \$715.00 because counsel conceded that she was not entitled to those fees; the SSA was directed to release the remaining amount to Plaintiff.

KEY QUOTATIONS

“Under Section 406(b), a court must serve “as an independent check” of contingency fee agreements “to assure that they yield reasonable results.”” (Legal Standard)

“While counsel proposes this amount be awarded as fees which she will “refund” to Plaintiff, the proper course, given counsel’s concession she is not entitled to these fees, is to decline to award them.” (Discussion)

FACTUAL BACKGROUND

Plaintiff sought Social Security disability benefits for physical impairments including osteoporosis, seizure disorder, alcohol abuse, and hyperparathyroidism. After Plaintiff moved for summary judgment, the Commissioner stipulated to a voluntary sentence-four remand, and the SSA later found Plaintiff disabled as of January 1, 2019, awarding \$72,234.00 in past-due benefits. The SSA withheld 25 percent of those benefits, or \$18,058.50, for attorney's fees; counsel had separately received \$7,200.00 under § 406(a) and sought \$10,858.50 under § 406(b).

PROCEDURAL HISTORY

Plaintiff filed a motion for summary judgment challenging the denial of disability benefits. The Commissioner stipulated to a voluntary remand under 42 U.S.C. § 405(g), sentence four, and the court remanded the matter. On

remand, the SSA found Plaintiff disabled and awarded \$72,234.00 in past-due benefits. The court had previously awarded counsel \$6,500.00 under the EAJA, and counsel then sought \$10,858.50 under § 406(b).

DISPOSITION

other

REMAND INSTRUCTIONS

The SSA was directed to certify \$10,143.50 in § 406(b) fees payable to The Law Offices of Patricia L. McCabe, release the remaining withheld amount to Plaintiff, and counsel was ordered to refund Plaintiff the previously awarded \$6,500.00 in EAJA fees.

CASES CITED

- Crawford v. Astrue, 586 F.3d 1142, 1144 (9th Cir. 2009) (en banc)
- Gisbrecht v. Barnhart, 535 U.S. 789, 796, 807-08 (2002)
- Parrish v. Commissioner of Social Security Administration, 698 F.3d 1215, 1218 (9th Cir. 2012)
- James F. v. King, 2025 WL 510432 (N.D. Cal. Feb. 14, 2025)
- Mirto v. Colvin, No. 23-CV-03198-SVK, 2024 WL 5250081 (N.D. Cal. Dec. 30, 2024)
- Barton v. Colvin, No. 21-CV-9662-RMI, 2024 WL 5173257 (N.D. Cal. Dec. 18, 2024)

OPINION

Higgins v. Kijakazi

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 MATTHEW H., Case No. 21-cv-07897-JSC 8 Plaintiff,

ORDER MOTION FOR ATTORNEY’S

9 v. FEES UNDER 42 U.S.C. § 406(b)

10 LELAND DUDEK1, Re: Dkt. No. 27 Acting Commissioner, Social Security, 11 Defendant. 12
13 Plaintiff’s counsel, Patricia L. McCabe, moves for attorney’s fees pursuant to 42 U.S.C. § 14
406(b) for representing Plaintiff in his successful appeal of the Commissioner of the Social 15
Security Administration’s denial of social security disability benefits. (Dkt. No 27.) After careful
16 consideration of Plaintiff’s motion and the relevant legal authority, the Court determines oral 17
argument is unnecessary, see N.D. Cal. Civ. L.R. 7-1(b), and GRANTS the motion for attorney’s
18 fees pursuant to Section 406(b). 19

BACKGROUND

20 This case stems from Plaintiff’s appeal of the Social Security Administration’s (“SSA”) 21
denial of his application for disability benefits for physical impairments including osteoporosis, 22

seizure disorder, alcohol abuse, and hyperparathyroidism. Plaintiff filed his motion for summary judgment on June 13, 2022. (Dkt. No. 18.) The government did not file an opposition brief, and instead, stipulated to a voluntary remand under § 405(g), sentence four. (Dkt. No. 23.) On October 31, 2022, the Court granted Plaintiff's application for \$6,500.00 in fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §2412(d). (Dkt. No. 26.) Following remand, the SSA found plaintiff disabled. (Dkt. No. 27-5.) Plaintiff was awarded disability benefits as of January 1, 2019, which resulted in total back due benefits of \$72,234.00. (Id.) The SSA withheld 25 percent of the total retroactive benefits, \$18,058.50, for payment of attorney's fees. (Dkt. No. 27-6.) Pursuant to Plaintiff and his counsel's contingency fee agreement of this case, counsel may seek fees up to 25 percent of any past-due benefits awarded to Plaintiff. (Dkt. No. 27-2 at 2.) Counsel has already been awarded attorney's fees in the amount of \$7,200.00 pursuant to Section 406(a) for services rendered in connection with administrative proceedings. (Dkt. No. 27-6.) Plaintiff now seeks attorney's fees in the amount of \$10,858.50 under Section 406(b). (Dkt. No. 27-1 at 5). From this amount, counsel agrees to refund Plaintiff \$6,500 for EAJA fees and offers to "refund" Plaintiff \$715.00 to account for scheduling delays. (Dkt. No. 27-1 at 5.) Counsel thus seeks net attorney's fees of \$3,643.50. (Id.) Plaintiff's counsel served Plaintiff with a copy of this motion. (Dkt. No. 27 at 5.) The Commissioner filed a response in which he took no position on Plaintiff's motion. (Dkt. No. 29.)

LEGAL STANDARD

Section 406(b) provides "[w]henever a court renders a judgment favorable to a [social security] claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee" to claimant's attorney; such a fee can be no more than 25 percent of the total of past-due benefits awarded to the claimant. 42 U.S.C. § 406(b)(1)(A). A court may award such a fee even if the court's judgment did not immediately result in an award of past-due benefits; where the court, for instance, remands for further consideration, the court may calculate the 25 percent fee based upon any past-due benefits awarded on remand. See, e.g., *Crawford v. Astrue*, 586 F.3d 1142, 1144 (9th Cir. 2009) (en banc). Under Section 406(b), a court must serve "as an independent check" of contingency fee agreements "to assure that they yield reasonable results." *Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002). Section 406(b) "does not displace contingent-fee agreements within the statutory ceiling; instead, [Section] 406(b) instructs courts to review for reasonableness fees yielded by 1 of the representation and the results achieved, see *Gisbrecht*, 535 U.S. at 808, and can include 2 analyzing: whether counsel provided substandard representation; any dilatory conduct by counsel 3 to accumulate additional fees; whether the requested fees are excessively large in relation to the 4 benefits achieved; and the risk counsel assumed by accepting the case. See *Crawford*, 586 F.3d at 5 1151-52. 6 A court must offset an award of Section 406(b) attorneys' fees by any award of fees 7 granted under the EAJA. See *Gisbrecht*, 535 U.S. at 796; *Parrish v. Comm'r of Soc. Sec. Admin.*, 869 F.3d 1215, 1218 (9th Cir. 2012).

9 DISCUSSION

10 Plaintiff's counsel has demonstrated the amount of fees requested under 406(b) is 11 reasonable for the services rendered. See *Gisbrecht*, 535 U.S. at 807. 12 First, while not dispositive, Plaintiff's and counsel's contingency fee arrangement is within 13 the 25 percent threshold permitted under Section 406(b), as the agreement provides counsel will 14 not ask for a fee of more than 25 percent of the total past-due benefits awarded. (Dkt. No. 27-1.) 15 Second, there is no indication a reduction in fees is warranted due to any substandard 16 performance by counsel or that counsel delayed these proceeding in an effort to increase the 17 amount of fees awarded. To the contrary, counsel provided substantial work and achieved 18 favorable results for Plaintiff as the Commissioner agreed to a voluntary remand for further 19 proceedings after receipt of Plaintiff's motion for summary judgment. (Dkt. No. 23.) 20 Additionally, counsel voluntarily agrees to discount the attorney's fees sought under 406(b) by 21 \$715.00 based on counsel's request for two continuances which resulted in a 72-day delay. (Dkt.

22 No. 27-1 at 5.) While counsel proposes this amount be awarded as fees which she will "refund" to

23 Plaintiff, the proper course, given counsel's concession she is not entitled to these fees, is to 24 decline to award them. Upon notice of this Order, SSA should then "release the remaining 25 amount" to Plaintiff. (Dkt. No. 27-6 at 2.) 26 Nor is the amount of fees, \$10,858.50, excessive. See, e.g., *James F. v. King*, No. 3:21- 27 CV-08392-JSC, 2025 WL 510432 (N.D. Cal. Feb. 14, 2025) (awarding \$43,914.40 in fees 1 277398 (N.D. Cal. Jan. 23, 2025) (awarding \$32,136 in fees following an award of \$128,544); 2 || *Mirto v. Colvin*, No. 23-CV-03198-SVK, 2024 WL 5250081 (N.D. Cal. Dec. 30, 2024) (awarding 3 \$9,621.42 in fees following an award of \$38,485.69); *Barton v. Colvin*, No. 21-CV-9662-RMI, 4 2024 WL 5173257 (N.D. Cal. Dec. 18, 2024) (awarding \$17,433.75 in fees following an award of 5 || \$69,735). 6 Lastly, the Court finds Plaintiff's counsel assumed a substantial risk of not recovering fees 7 || when accepting this case. At the time counsel filed this action, the SSA had completely denied 8 || Plaintiff any requested benefits, and counsel could not know the Commissioner would agree to a 9 || remand. Further, counsel notes the risk Plaintiffs alcohol-use disorder could have precluded the 10 || claim in both the United States District Court and in the underlying administrative action. (Dkt.

11 No. 27-1 at 8.) Accordingly, the Court finds the amount of requested fees is reasonable.

12 CONCLUSION

13 For the reasons described above, the Court GRANTS Plaintiffs counsel's motion for fees. 14 The Commissioner is directed to certify fees under 42 U.S.C. § 406(b) in the amount of 3 15 \$10,143.50 payable to The Law Offices of Patricia L. McCabe. Plaintiffs counsel is ordered to a 16 || refund to Plaintiff the previously awarded EAJA fees in the amount of \$6,500.00. 3 17 This Order disposes of Docket. No. 27. 19 IT IS SO ORDERED. 20 || Dated: April 7, 2025 22 ne

JAGQUELINE SCOTT CORL

23 United States District Judge 24 25 26 27 28

