

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Jayme Romero v. Frank Bisignano, Commissioner of Social Security

Romero · No. 2:22-cv-0969-JDP (SS) · Decided May 22, 2025

SUMMARY

The United States District Court for the Eastern District of California granted plaintiff’s counsel’s motion for attorney fees under 42 U.S.C. § 406(b) following a remand and favorable award of Social Security benefits. The court awarded \$26,000 and ordered counsel to refund plaintiff the \$5,900 previously awarded under the Equal Access to Justice Act.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Jeremy D. Peterson
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 22, 2025
DOCKET	2:22-cv-0969-JDP (SS)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff's counsel moved for attorney fees under 42 U.S.C. § 406(b) after the court remanded the Social Security case and plaintiff subsequently received a favorable disability determination and an award of past-due benefits.
STANDARD OF REVIEW	The court reviewed the requested contingent fee for reasonableness under 42 U.S.C. § 406(b), considering the character of the representation, the results achieved, counsel's performance, delay, and the proportionality of the fee to the time spent.
PRECEDENTIAL VALUE	unpublished
PARTIES	Jayme Romero v. Frank Bisignano, Commissioner of Social Security

TOPICS

- attorney fees
- administrative law
- remedies
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether counsel's requested \$26,000 fee under 42 U.S.C. § 406(b) was reasonable.
2. Whether counsel was required to refund the smaller EAJA award to plaintiff after receiving the § 406(b) fee.

HOLDINGS

1. The requested \$26,000 attorney fee was reasonable and could be awarded under § 406(b), because it was below the statutory twenty-five-percent ceiling and was supported by the favorable result, counsel's experience, the time spent, the absence of delay or substandard performance, and the risk of loss.
2. Upon receiving the § 406(b) award, counsel must refund plaintiff the \$5,900 previously awarded under the Equal Access to Justice Act.

KEY QUOTATIONS

“The twenty-five percent statutory maximum fee is not an automatic entitlement; the court must ensure that the requested fee is reasonable.” (1)

“In assessing whether a fee is reasonable, the court should consider “the character of the representation and the results the representative achieved.”” (1)

FACTUAL BACKGROUND

Plaintiff entered into a contingent-fee agreement requiring payment of twenty-five percent of any past-due benefits awarded. After the court remanded the Social Security matter, plaintiff was found disabled and received \$133,231 in past-due benefits. Counsel requested \$26,000 for 26.4 hours of work, an effective hourly rate of approximately \$984.84, and agreed to refund the previously awarded \$5,900 EAJA fee.

PROCEDURAL HISTORY

The court had previously remanded the matter for further proceedings. On remand, plaintiff was found disabled and awarded \$133,231 in past-due benefits. Plaintiff's counsel then sought \$26,000 in fees under 42 U.S.C. § 406(b), agreeing to refund the smaller EAJA award previously received by counsel.

DISPOSITION

other

CASES CITED

- *Gisbrecht v. Barnhart*, 535 U.S. 789, 798 n.6 (2002)
- *Crawford v. Astrue*, 586 F.3d 1142, 1147 (9th Cir. 2009) (en banc)
- *Gisbrecht v. Barnhart*, 535 U.S. 789, 808-09 (2002)

- Crawford v. Astrue, 586 F.3d 1142, 1151 (9th Cir. 2009) (en banc)
- De Vivo v. Berryhill, 2018 WL 4262007 (E.D. Cal. Sept. 6, 2018)
- White v. Berryhill, No. cv 04-00331-AS, 2017 WL 11634804, at *3 (C.D. Cal. July 7, 2017)
- Monica H. v. Comm’r, Soc. Sec. Admin., No. 3:16-cv-2111-JR (D. Or. Jan. 25, 2021)
- Kelly Kay M. v. O'Malley, No. 22-cv-1969-DDL, 2024 WL 4536462, at *3 (S.D. Cal. Oct. 21, 2024)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 JAYME ROMERO, Case No. 2:22-cv-0969-JDP (SS) 12 Plaintiff, 13 v.
ORDER 14 FRANK BISIGNANO, Commissioner of 15 Social Security, 16 Defendant. 17 18
Plaintiff’s counsel seeks an award of attorney fees under 42 U.S.C. § 406(b).1 ECF No. 19 19.
Plaintiff entered into a contingent fee agreement providing that he would pay counsel twenty- 20
five percent of any award of past-due benefits.

ECF No. 19-3 at 1. After this court remanded for 21 further proceedings, plaintiff was found
disabled and awarded \$133,231 in past-due benefits. 22 ECF No. 19-1 at 4. Plaintiff’s counsel
requests \$26,000 in attorney fees, which is less than the 23 statutory maximum, and which equates
to an effective hourly rate of \$984.84. ECF No. 19 at 3-4. 24 An attorney is entitled to reasonable
fees for successfully representing social security 25 claimants in district court.

26 27 1 Although the motion for fees was filed under plaintiff’s name, plaintiff’s counsel is the 28
real party in interest. See *Gisbrecht v. Barnhart*, 535 U.S. 789, 798 n.6 (2002). 1 Whenever a court
renders a judgment favorable to a claimant under this subchapter who was represented before the
court by an 2 attorney, the court may determine and allow as part of its judgment a reasonable fee
for such representation, not in excess of 25 percent 3 of the total of the past-due benefits to which
the claimant is entitled by reason of such judgment.

4 5 42 U.S.C. § 406(b)(1)(A). Rather than being paid by the government, fees under section
406(b) 6 are paid by the claimant from the awarded past-due benefits. *Crawford v. Astrue*, 586
F.3d 1142, 7 1147 (9th Cir. 2009) (en banc) (citing *Gisbrecht*, 535 U.S. at 802).

The twenty-five percent 8 statutory maximum fee is not an automatic entitlement; the court must
ensure that the requested 9 fee is reasonable. *Gisbrecht*, 535 U.S. at 808-09 (“We hold that §
406(b) does not displace 10 contingent-fee agreements within the statutory ceiling; instead, §
406(b) instructs courts to review 11 for reasonableness fees yielded by those agreements.”).

In assessing whether a fee is reasonable, 12 the court should consider “the character of the
representation and the results the representative 13 achieved.” *Id.* at 808. A “court may properly
reduce the fee for substandard performance, delay, 14 or benefits that are not in proportion to the
time spent on the case.” *Crawford*, 586 F.3d at 1151. 15 The court finds that the requested fees are
reasonable.

Counsel's billing records reflect a total of 26.4 hours of attorney time on this case. ECF No. 19-4 at 1. Counsel's request for \$26,000, which is less than the statutory maximum, would constitute an hourly rate of approximately \$984.84 for attorney services. Counsel did not engage in dilatory conduct or perform in a substandard manner. Indeed, counsel's representation resulted in this matter being remanded for further proceedings, which resulted in a favorable decision and an award of benefits.

See ECF Nos. 16 & 19-2 at 1-10. Given counsel's experience, the result obtained in this case, and the risk of loss in representing plaintiff, the court finds the hourly rate reasonable. See, e.g., *De Vivo v. Berryhill*, 2018 WL 4262007 (E.D. Cal. Sept. 6, 2018) (awarding fees at an effective hourly rate of \$1,116.26); *White v. Berryhill*, No. cv 04-00331-AS, 2017 WL 11634804, at *3 (C.D.

Cal. July 7, 2017) (awarding fees at an effective hourly rate of \$1,612); *Monica H. v. Comm'r, Soc. Sec. Admin.*, No. 3:16-cv-2111-JR (D. Or. Jan. 25, 2021) (awarding fees at an effective hourly rate of \$2,000); *Kelly Kay M. v. O'Malley*, No. 22-cv-1969-DDL, 2024 WL 2 | 4536462, at *3 (S.D. Cal. Oct. 21, 2024) (awarding fees at an effective hourly rate of \$1,923.07).

Counsel concedes that the \$5,900 award should be offset by the fees previously awarded under the Equal Access to Justice Act ("EAJA"). ECF No. 19 at 5; see ECF No. 18. He also indicates that he will reimburse plaintiff the amount previously awarded under the EAJA. See *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (holding that where attorney's fees are awarded under both EAJA and § 406(b), the attorney must refund the smaller of the two awards to the plaintiff).

Accordingly, it is hereby ORDERED that: 1. The motion for attorney fees, ECF No. 19, is GRANTED. 2. Plaintiffs counsel is awarded \$26,000 in fees pursuant to 42 U.S.C. § 406(b). 3. Upon receipt of the \$26,000 award, counsel shall refund to plaintiff the sum of \$5,900 previously awarded under the EAJA. IT IS SO ORDERED. 1 Sty — Dated: _ May 22, 2025 Q—— JEREMY D. PETERSON UNITED STATES MAGISTRATE JUDGE