

**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.

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 16 total of 26.4 hours of attorney time on this case. ECF No. 19-4 at 1. Counsel’s request for 17 \$26,000, which is less than the statutory maximum, would constitute an hourly rate of 18 approximately \$984.84 for attorney services. Counsel did not engage in dilatory conduct or 19 perform in a substandard manner. Indeed, counsel’s representation resulted in this matter being 20 remanded for further proceedings, which resulted in a favorable decision and an award of 21 benefits.

See ECF Nos. 16 & 19-2 at 1-10. Given counsel’s experience, the result obtained in 22 this case, and the risk of loss in representing plaintiff, the court finds the hourly rate reasonable. 23 See, e.g., De Vivo v. Berryhill, 2018 WL 4262007 (E.D. Cal. Sept. 6, 2018) (awarding fees at an 24 effective hourly rate of \$1,116.26); White v. Berryhill, No. cv 04-00331-AS, 2017 WL 11634804, 25 at *3 (C.D.

Cal. July 7, 2017) (awarding fees at an effective hourly rate of \$1,612); Monica H. v. 26 Comm’r, Soc. Sec. Admin., No. 3:16-cv-2111-JR (D. Or. Jan. 25, 2021) (awarding fees at an 27 28 1 | 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).

3 Counsel concedes that the \$5,900 award should be offset by the fees previously awarded 4 | under the under the Equal Access to Justice Act (“EAJA”). ECF No. 19 at 5; see ECF No. 18. 5 | He also indicates that he will reimburse plaintiff the amount previously awarded under the EAJA. 6 | See *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (holding that where attorney’s fees are 7 | awarded under both EAJA and § 406(b), the attorney must refund the smaller of the two awards 8 | to the plaintiff).

9 Accordingly, it is hereby ORDERED that: 10 1. The motion for attorney fees, ECF No. 19, is GRANTED. 11 2. Plaintiffs counsel is awarded \$26,000 in fees pursuant to 42 U.S.C. § 406(b). 12 3. Upon receipt of the \$26,000 award, counsel shall refund to plaintiff the sum of \$5,900 13 previously awarded under the EAJA. 14 1s IT IS SO ORDERED. 16 | 1 Sty — Dated: _ May 22, 2025 Q—— 17 JEREMY D. PETERSON 18 UNITED STATES MAGISTRATE JUDGE 19 20 21 22 23 24 25 26 27 28

