

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PRECEDENTIAL VALUE	unpublished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)

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