

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

James T. v. Frank Bisignano

James T. · No. 22cv0694-SBC · Decided August 21, 2025

SUMMARY

The United States District Court for the Southern District of California granted plaintiff’s counsel’s motion for attorney’s fees under 42 U.S.C. § 406(b) following a remand in a Social Security disability case and a fully favorable decision on remand. The court approved \$40,336.00 in fees, payable from plaintiff’s past-due benefits, and ordered counsel to refund the previously awarded \$5,261.00 in Equal Access to Justice Act fees to plaintiff.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Steve B. Chu
JURISDICTION	United States District Court for the Southern District of California
DECIDED	August 21, 2025
DOCKET	22cv0694-SBC
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff's counsel moved under 42 U.S.C. § 406(b) for authorization of attorney's fees after obtaining remand and a fully favorable disability determination on remand.
STANDARD OF REVIEW	The court determines whether the requested § 406(b) fee is reasonable by first examining the lawful contingent-fee agreement and then assessing whether reduction is warranted for substandard representation, delay, or a fee disproportionate to the time spent and benefits obtained.
PRECEDENTIAL VALUE	unpublished, nonprecedential district court order
PARTIES	James T. v. Frank Bisignano, Commissioner of the Social Security Administration

TOPICS

- judicial review of agency action
- administrative law
- remedies

PRACTICE AREAS

Social Security

administrative law

attorney's fees

QUESTIONS PRESENTED

1. Whether the contingent-fee agreement and requested \$40,336.00 fee were reasonable under 42 U.S.C. § 406(b).
2. Whether counsel was required to refund the previously awarded \$5,261.00 EAJA fee to Plaintiff after receiving the § 406(b) fee.

HOLDINGS

1. The requested \$40,336.00 fee was reasonable and did not require a downward adjustment because it was within the 25-percent statutory ceiling, counsel provided timely and effective representation, there was no litigation delay, and the fee was not excessive in relation to the benefits obtained.
2. Counsel must refund the \$5,261.00 previously received under the EAJA to Plaintiff because the EAJA and § 406(b) awards compensated the same work.

KEY QUOTATIONS

“[A] district court charged with determining a reasonable fee award under § 406(b)(1)(A) must respect ‘the primacy of lawful attorney-client fee agreements,’ ‘looking first to the contingent-fee agreement, then testing it for reasonableness.’” (at 2)

“The court may properly reduce the fee for substandard performance, delay, or benefits that are not in proportion to the time spent on the case.” (at 2)

“[I]n order to maximize the award of past-due benefits to claimants and to avoid giving double compensation to attorneys, the savings provision requires a lawyer to offset any fees received under § 406(b) with any award that the attorney receives under § 2412 if the two were for the ‘same work.’” (at 4)

FACTUAL BACKGROUND

Plaintiff's counsel represented Plaintiff in federal judicial review proceedings that resulted in remand for further administrative proceedings. On remand, the ALJ issued a fully favorable decision finding Plaintiff disabled as of April 1, 2018, and the Social Security Administration awarded approximately \$161,347.00 in past-due benefits. The representation agreement provided for a fee of up to 25 percent of past-due benefits, and counsel sought \$40,336.00, while counsel had previously received \$5,261.00 under the EAJA.

PROCEDURAL HISTORY

Plaintiff filed an action under 42 U.S.C. § 405(g) seeking review of an adverse Social Security disability decision. The court resolved the parties' joint motion for judicial review in Plaintiff's favor, remanded for further administrative proceedings, and awarded \$5,261.00 in EAJA fees. On remand, the ALJ found Plaintiff disabled and the Social Security Administration awarded approximately \$161,347.00 in past-due benefits. Plaintiff's counsel then sought \$40,336.00 under § 406(b).

DISPOSITION

other

CASES CITED

- Crawford v. Astrue, 586 F.3d 1142, 1148, 1151-52 (9th Cir. 2009)
- Gisbrecht v. Barnhart, 535 U.S. 789, 796, 802 (2002)
- Parrish v. Comm'r of Soc. Sec. Admin., 698 F.3d 1215, 1218 (9th Cir. 2012)
- Tamiko T. v. Kijakazi, Case No. 20cv1229-KSC, 2023 WL 253114, at *3 (S.D. Cal. Jan. 18, 2023)
- Reddick v. Berryhill, Case No. 16-cv-29-BTM-BLM, 2019 WL 2330895, at *2 (S.D. Cal. May 30, 2019)
- Roland S. v. Kijakazi, No. 20-cv-1068, 2023 WL 6966153, at *3 (S.D. Cal. Oct. 20, 2023)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 JAMES T.,¹ Case No.: 22cv0694-SBC 12 Plaintiff, ORDER GRANTING
PLAINTIFF'S 13 v. COUNSEL'S MOTION FOR ATTORNEY'S FEES PURSUANT TO 14
FRANK BISIGNANO, Commissioner of 42 U.S.C. § 406(b) the Social Security Administration,²
15 Defendant. [ECF No. 29] 16 17 18 Plaintiff's counsel, Monica Perales, of the Law Offices of
Lawrence D. Rohlfing, 19 Inc., CPC, filed a motion for attorney's fees pursuant to 42 U.S.C. §
406(b), in which 20 counsel requests an order granting attorney's fees in the amount of
\$40,336.00.

(ECF No. 21 29.) The Court issued a briefing schedule providing a deadline for Plaintiff and
Defendant 22 to respond to the motion. (ECF No. 30.) Defendant responded to the motion, stating
that 23 the Commissioner neither supports nor opposes Plaintiff's counsel's request for attorney's
24 25 26 1 The Court refers to Plaintiff using only his first name and last initial pursuant to the 27
Court's Civil Local Rules.

See S.D. Cal. Civ. R. 7.1(e)(6)(b). 2 Frank Bisignano is now the Commissioner of Social Security
and is automatically 28 1 fees. (ECF No. 31.) Plaintiff did not file a response. For the reasons
stated below, the 2 motion is GRANTED. 3 I. BACKGROUND 4 On May 16, 2022, Plaintiff
initiated this action against Defendant Commissioner of 5 Social Security for judicial review under
42 U.S.C. § 405(g) of a final adverse decision for 6 social security disability benefits.

(ECF No. 1.) On May 20, 2022, the parties consented to 7 Magistrate Judge jurisdiction over the
case. (ECF No. 7.) On January 16, 2024, the Court 8 resolved the parties' joint motion for judicial
review in favor of Plaintiff, and remanded 9 this case for further administrative proceedings. (ECF
No. 26.)

The Court also granted the 10 parties' joint motion for attorney's fees under the Equal Access to Justice Act ("EAJA"), 11 28 U.S.C. § 2412(d), in the amount of \$5,261.00. (ECF No. 28.) 12 On remand, the Administrative Law Judge ("ALJ") issued a "fully favorable" 13 decision and found Plaintiff disabled as of April 1, 2018. (ECF No. 29-2.)

The Social 14 Security Administration issued a Notice of Reward on April 20, 2025, in which Plaintiff 15 was awarded approximately \$161,347.00 in past-due disability benefits. (ECF Nos. 29-3; 16 29-4.) Plaintiff subsequently filed this motion for fees. 17 In the motion presently before the Court, Plaintiff's counsel seeks \$40,336.00 in 18 attorney's fees pursuant to a representation agreement, dated April 20, 2021, in which 19 Plaintiff agreed to pay counsel "25% of the past due benefits awarded upon reversal of any 20 unfavorable ALJ decision for work before the Social Security Administration." (ECF No. 21 29-1.)

22 II. LEGAL STANDARD 23 Under 42 U.S.C. § 406(b), "a court may allow a reasonable fee... not in excess of 24 25 percent of the... past-due benefits awards to the claimant" as attorney's fees for 25 representation in court proceedings. "[A] district court charged with determining a 26 reasonable fee award under § 406(b)(1)(A) must respect 'the primacy of lawful attorney- 27 client fee agreements,' 'looking first to the contingent-fee agreement, then testing it for 28 reasonableness.'" *Crawford v. Astrue*, 586 F.3d 1142, 1148 (9th Cir.

2009) (citing 1 *Gisbrecht v. Barnhart*, 535 U.S. 789 (2002)). Under this framework, the court does not 2 start with a lodestar calculation, rather, the court "first look[s] to the fee agreement and 3 then adjusts downward if the attorney provided substandard representation." *Id.* at 1151. 4 "The court may properly reduce the fee for substandard performance, delay, or benefits 5 that are not in proportion to the time spent on the case." *Id.* 6 An attorney's fee award under § 406(b) is paid by the claimant out of the past-due 7 benefits awarded, the losing party is not responsible for payment.

Gisbrecht, 535 U.S. at 8 802, 122 S. Ct. 1817. Attorneys are permitted to seek recovery under both the EAJA and § 9 406(b), and to keep the larger fee, but must refund the smaller fee to the claimant. *Id.* at 10 796, 122 S. Ct. 1817; *Parrish v. Comm'r Soc. Sec. Admin.*, 698 F.3d 1215, 1218 (9th Cir. 11 2012). 12 III. DISCUSSION 13 The contingency fee agreement between Plaintiff and his counsel, the Law Offices 14 of Lawrence D. Rohlfing, Inc., CPC, provides that Plaintiff's counsel was to be paid a 15 maximum of twenty-five percent of past-due benefits awarded to Plaintiff.

(ECF No. 29- 16 1.) As such, the contingency fee agreement is within the statutory ceiling. See 42 U.S.C. § 17 406(b)(1)(A). On remand, the Commissioner awarded Plaintiff approximately \$161,347.00 18 in past-due benefits. (ECF Nos. 29-3; 29-4.) Twenty-five percent of that amount is 19 \$40,336.75. Plaintiff's counsel seeks an attorney's fee award of \$40,336.00, almost exactly 20 twenty-five percent of the past-due benefits awarded to Plaintiff.

21 Applying the first two Crawford factors, nothing in this case suggests that Plaintiff's 22 counsel rendered substandard representation or delayed this litigation. See Crawford, 586 F.3d at 1151-52. Plaintiff's counsel timely and efficiently litigated this case, achieved 24 remand for her client, and secured a "fully favorable" decision on remand. Plaintiff's 25 counsel's representation resulted in a sizeable award of past-due benefits to Plaintiff, as 26 well as monthly benefits going forward.

(ECF Nos. 29-3; 29-4.) 27 Next, the Court considers the third Crawford factor, whether the requested fees are 28 excessively large in relation to the benefits achieved. See Crawford, 586 F.3d at 1151-52. 1 Plaintiff's counsel's firm expended 18.2 hours of attorney time and 5.10 hours of paralegal 2 time, for a total of 23.3 hours, while representing Plaintiff through the entry of the order of 3 remand.

(ECF Nos. 29 at 16; 29-5 at 1-2.) Dividing the requested fees by the number of 4 hours expended results in an effective hourly rate of \$1,731.15, which may appear high. 5 However, this rate falls within the range of hourly rates awarded in other Social Security 6 cases. See, e.g., Tamiko T. v. Kijakazi, Case No.: 20cv1229-KSC, 2023 WL 253114, at *3 7 (S.D. Cal. Jan.

18, 2023) (finding an effective hourly rate of \$1,339.29 "falls within the 8 range of hourly rates charged by attorneys in other matters based on the Court's own 9 observations and according to the information provided by counsel in support of the 10 Motion"); Reddick v. Berryhill, Case No.: 16-cv-29-BTM-BLM, 2019 WL 2330895, at *2 11 (S.D. Cal. May 30, 2019) (determining on reconsideration that a fee award of \$43,000 for 12 21.6 hours of work by counsel on the case was reasonable, which equates to an hourly rate 13 of \$1,990.74); Roland S. v. Kijakazi, No. 20-cv-1068, 2023 WL 6966153, at *3 (S.D.

Cal. 14 Oct. 20, 2023) (approving an effective hourly rate of \$1,438.35). 15 Furthermore, in taking on the case on a contingency basis, Plaintiff's counsel bore 16 the risk in the event the appeal proved unsuccessful.

Thus, in light of these factors and 17 circumstances, the Court finds that the requested fee is reasonable, and a downward 18 adjustment is not warranted. Therefore, the Court concludes that Plaintiff's counsel's 19 attorney's fees request of \$40,336.00 is reasonable. 20 Having approved of the fees, an adjustment must be made in light of the Court's 21 prior award under the EAJA in the amount of \$5,261.00. "[I]n order to maximize the award 22 of past-due benefits to claimants and to avoid giving double compensation to attorneys, the 23 savings provision requires a lawyer to offset any fees received under § 406(b) with any 24 award that the attorney receives under § 2412 if the two were for the 'same work.'" Parrish 25 v. Comm'r of Soc.

Sec. Admin., 698 F.3d 1215, 1218 (9th Cir. 2012). Thus, as Plaintiff's 26 counsel has also acknowledged, the previous amount recovered under the EAJA must be 27 reimbursed to Plaintiff. (See ECF No. 29 at 11.) 28 / / / / I IV. CONCLUSION 2 Accordingly, after due consideration and

for the reasons stated above, the Court 3 ||GRANTS Plaintiff's motion for authorization of attorney's fees pursuant to 42 U.S.C. 4 || § 406(b).

The Court approves the requested fees in the amount of \$40,336.00, to be paid 5 || out of Plaintiff's past-due benefits in accordance with the Social Security Administration's 6 || policy. The Court further ORDERS Plaintiffs counsel to refund the \$5,261.00 to Plaintiff 7 || that she previously received under the EAJA. 8 IT IS SO ORDERED. 9 Dated: August 21, 2025 10 BF G. 12 Hon. SteveB.Chu 3 United States Magistrate Judge 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28