

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

Shane H. v. Frank Bisignano

No. 19-cv-1435-RSH-KSC (S.D. Cal. Dec. 22, 2025) · No. 19-cv-1435-RSH-KSC · Decided December 22,
2025

SUMMARY

The United States District Court for the Southern District of California grants Plaintiff's counsel's motion for attorneys' fees under 42 U.S.C. § 406(b). The court approves \$63,308, representing 25% of the claimant's past-due Social Security benefits, and directs the Commissioner to pay counsel \$52,667.75 after offsetting previously awarded EAJA fees. The court finds the contingent-fee agreement and requested amount reasonable.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 SHANE H., Case No.: 19-cv-1435-RSH-KSC 12 Plaintiff, ORDER
GRANTING MOTION 13 v. FOR ATTORNEYS' FEES UNDER 42 U.S.C. § 406(b) 14 FRANK
BISIGNANO, Commissioner of Social Security, 15 [ECF No. 24] Defendant. 16 17 18 19
Pending before the Court is a motion for attorneys' fees pursuant to 42 U.S.C. § 20 406(b), filed
by Plaintiff's counsel.

ECF No. 24. As set forth below, the Court grants the 21 motion. 22 I. BACKGROUND 23 On
July 30, 2019, Plaintiff filed this action seeking judicial review of the 24 Commissioner's denial
of his application for disability insurance benefits. ECF No. 1.

After 25 Plaintiff's filing of his merits brief, the Parties jointly stipulated to a remand pursuant to
26 sentence four of 42 U.S.C. § 405(g). ECF No. 18. On April 28, 2020, the Court granted the 27
joint motion and remanded the case. ECF No. 19. Thereafter, on further joint motion of the 28
Parties, the Court entered an award of attorneys' fees pursuant to the Equal Access to 1 Justice Act
("EAJA"), 28 U.S.C. § 2412(d), in the amount of \$7,532.67.

ECF No. 23. 2 On remand, the proceedings resulted in a further decision to Plaintiff, for which 3
Plaintiff sought judicial review by filing a new federal lawsuit on January 25, 2023, Husted 4 v.
Kijakazi, No. 23-cv-141-WQH-JLB (S.D. Cal.).

In that case, the Parties ultimately filed 5 another joint motion to remand, which the Court granted
on May 18, 2023. 23cv141, ECF 6 Nos. 13; 14. On August 8, 2023, the Court awarded additional
attorneys' fees in the new 7 lawsuit under the EAJA in the amount of \$3,107.58. 23cv141, ECF

No. 17. 8 On remand for a second time, the Commissioner on September 23, 2025 ruled in 9 Plaintiff's favor and awarded past-due benefits in the amount of \$253,232.

ECF No. 24-1 10 at 4. The Commissioner has withheld 25% of that amount, or \$63,308, as potentially 11 payable to Plaintiff's attorney. Id. 12 On October 3, 2025, Plaintiff filed his current fees motion. ECF No. 24. Plaintiff 13 seeks an award of fees in the amount withheld, with an offset for the \$10,640.25 in EAJA 14 fees previously awarded, for a net payment by the Social Security Administration in the 15 amount of \$52,667.75.

Id. at 2–3. 16 On November 21, 2025, the Commissioner filed a response. ECF No. 30. The 17 Commissioner notes that, “[a]lthough the motion for fees is filed under Plaintiff's name, 18 his attorney is the real party-in-interest, and the Commissioner has no direct financial stake 19 in the outcome of this motion.” Id. at 2.

The Commissioner states that he therefore “neither 20 supports nor opposes” the motion. Id. Plaintiff has been provided notice of the request for 21 fees made by his attorneys in his name, ECF No. 24 at 5, and has not opposed the request. 22 See Docket. 23 II. LEGAL STANDARD 24 Under 42 U.S.C. § 406(b), a court entering judgment in favor of a social security 25 claimant who was represented by an attorney “may determine and allow as part of its 26 judgment a reasonable fee for such representation, not in excess of 25 percent of the total 27 of the past-due benefits to which the claimant is entitled by reason of such judgment” 28 42 U.S.C. § 406(b)(1)(A). “Within the 25 percent boundary... the attorney for the 1 successful claimant must show that the fee sought is reasonable for the services rendered.” 2 *Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002). “[A] district court charged with 3 determining a reasonable fee award under § 406(b)(1) (A) must respect ‘the primacy of 4 lawful attorney-client fee agreements,’ ‘looking first to the contingent-fee agreement, then 5 testing it for reasonableness.’” *Crawford v. Astrue*, 586 F.3d 1142, 1148 (9th Cir.

2009) 6 (en banc) (quoting *Gisbrecht*, 535 U.S. at 793, 808). The court “first look[s] to the fee 7 agreement and then adjust[s] downward if the attorney provided substandard representation 8 or delayed the case, or if the requested fee would result in a windfall.” Id. at 1151. “The 9 court may properly reduce the fee for substandard performance, delay, or benefits that are 10 not in proportion to the time spent on the case.” Id. 11 An attorney's fee award under § 406(b) is paid out of the claimant's successful 12 recovery.

Gisbrecht, 535 U.S. at 802. A court may award fees under § 406(b) to an attorney 13 who previously received fees under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. 14 § 2412. *Parrish v. Comm'r of SSA*, 698 F.3d 1215, 1218 (9th Cir. 2012).

However, in order 15 to “maximize the award of past-due benefits to claimants and to avoid giving double 16 compensation to attorneys,” a lawyer is required to “offset any fees received

under § 406(b) 17 with any award that the attorney receives under § 2412 if the two were for the ‘same 18 work.’” Id. (citing *Gisbrecht*, 535 U.S. at 796). 19 III. ANALYSIS 20 First, the Court determines that the contingent-fee arrangement in this case, ECF No. 21 24-2, which provides that Counsel will receive 25% of past-due benefits awarded after a 22 favorable decision, is within the statutory limit.

See 42 U.S.C. § 406(b)(1)(A); *Crawford*, 23 586 F.3d at 1147. Counsel entered into this agreement despite the risk of receiving little or 24 no recovery in the event of an unfavorable outcome. There is no evidence here of “fraud 25 or overreaching” in connection with the negotiation of the agreement. See *Astrue*, 586 F.3d 26 at 1145. Plaintiff was given the opportunity to oppose the fee motion but did not do so.

27 /// 28 /// 1 Second, the Court determines that the requested fees are reasonable. There is no 2 ||evidence in the record of substandard representation or undue delay caused by counsel. 3 ||Counsel has provided time records reflecting 49.5 hours spent on Plaintiff’s case at the 4 district court level. ECF No. 24-3 at 3, 6.

The requested fees of \$63,308 amount to an 5 ||hourly rate of \$1,279. Although this hourly rate is high, the work was performed on a 6 || contingent-fee arrangement, and secured a favorable award for Plaintiff; and the rate falls 7 || within the general range of fees found to be reasonable in similar cases. See *Branch* □□□ 8 || *Bisignano*, No. 21-cv-785-KSC, 2025 WL 3238183, at *3 (S.D. Cal. Nov. 20, 2025) 9 ||(approving de facto hourly rate of \$1,437); *Roland S. v. Kijakazi*, No. 3:20-CV-01068- 10 || AHG, 2023 WL 6966153, at *3 (S.D. Cal. Oct. 20, 2023) (approving de facto hourly rate 11 || of \$1,438.35); *Desiree D. v. Saul*, No. 3:19-CV-01522-RBM, 2021 WL 1564331, at *3 12 ||(S.D. Cal. Apr. 20, 2021) (approving de facto hourly rate of \$1,494.34); *Martinez v. Saul*, 13 15-CV-1994-BTM-BGS, 2019 WL 3322481, at *2 (S.D.

Cal. July 24, 2019) 14 || (approving de facto hourly rate of \$1,488.83). The Court concludes that the award would 15 be disproportionate or result in a windfall, and declines to adjust the award downward. 16 CONCLUSION 17 For the foregoing reasons, the motion for fees [ECF No. 24] is GRANTED. 18 Plaintiffs counsel is awarded \$63,308.00.

To effectuate the EAJA offset, the 19 || Commissioner is directed to remit the net payment of \$52,667.75 directly to counsel at the 20 || following address: Chermol & Fishman LLC, 11450 Bustleton Ave., Philadelphia, PA 21 19116.

Because SSA’s payment centers require the name of a single attorney, such 22 payment shall be directed to attorney David F. Chermol. 23 IT IS SO ORDERED. 24 || Dated: December 22, 2025 ‘ 25 ikut Howe Hon. Robert S. Huie United States District Judge 27 28

