

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Emelia Gallo v. Commissioner of Social Security

Gallo · No. 1:22-cv-00152-GSA · Decided March 27, 2025

SUMMARY

The United States District Court for the Eastern District of California granted counsel’s motion for attorney fees under 42 U.S.C. § 406(b) following a remand and subsequent award of past-due Social Security benefits. The court approved a gross fee award of \$22,000 and directed counsel to refund the previously awarded \$7,000 in EAJA fees to the plaintiff. The court found the requested fee reasonable based on the representation, result achieved, hours worked, and absence of dilatory or substandard conduct.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Gary S. Austin
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 27, 2025
DOCKET	1:22-cv-00152-GSA
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff sought attorney fees under 42 U.S.C. § 406(b) after obtaining a remand in a Social Security benefits action and subsequently receiving a favorable disability determination and past-due benefits.
STANDARD OF REVIEW	The court independently reviewed the contingency-fee arrangement to determine whether it produced a reasonable result, considering the character of the representation, the result achieved, counsel's performance and conduct, and whether the fee was excessive in relation to the benefits received.
PRECEDENTIAL VALUE	Unknown
PARTIES	Emelia Gallo v. Commissioner of Social Security

TOPICS

- attorney fees
- judicial review of agency action
- administrative law
- remedies
- civil procedure

PRACTICE AREAS

Social Security law

administrative law

attorney fees

civil procedure

QUESTIONS PRESENTED

1. Whether counsel's requested \$22,000 attorney-fee award was reasonable under 42 U.S.C. § 406(b).
2. Whether the requested fee, although producing an effective hourly rate of \$711.97, was an impermissible windfall or otherwise excessive.

HOLDINGS

1. A court may approve a contingency-fee award for successful representation of a Social Security claimant when the award does not exceed 25% of past-due benefits and is reasonable in light of the representation and result achieved.
2. A comparatively high effective hourly rate does not by itself make a contingency-fee award unreasonable because the lodestar is only a guidepost in § 406(b) contingency-fee matters and may not fully reflect the risk assumed by counsel.
3. The motion for § 406(b) fees was granted for a gross award of \$22,000, and counsel was required to remit the previously awarded \$7,000 in EAJA fees directly to Plaintiff upon receipt.

KEY QUOTATIONS

"However, the Court must review contingent-fee arrangements "as an independent check, to assure that they yield reasonable results in particular cases." " (Legal Standard)

"Unlike fee motions governed entirely by the lodestar method, in contingency fee matters pursuant to section 406(b) the lodestar is merely a guidepost, and a comparatively high effective hourly rate is generally warranted to compensate counsel for the risk assumed in representing social security claimants." (Analysis)

FACTUAL BACKGROUND

Plaintiff entered into a contingency-fee agreement providing for attorney fees of up to 25% of past-due benefits and requiring refund of EAJA fees if § 406(b) fees were awarded. Counsel spent 30.9 hours reviewing the administrative record and preparing the summary-judgment motion, obtained a remand, and Plaintiff was ultimately awarded past-due benefits of which the agency withheld 25%, or \$22,051.75, for potential payment to counsel. Counsel requested and received approval for a gross § 406(b) award of \$22,000, subject to refunding the previously awarded \$7,000 in EAJA fees to Plaintiff.

PROCEDURAL HISTORY

Plaintiff filed this action challenging the denial of Social Security benefits. The court granted Plaintiff's motion for summary judgment and remanded for further proceedings; on remand, the agency found Plaintiff disabled and awarded past-due benefits. The court previously awarded \$7,000 in EAJA fees, and Plaintiff's counsel then moved for \$22,000 in fees under § 406(b).

DISPOSITION

CASES CITED

- *Gisbrecht v. Barnhart*, 535 U.S. 789 (2002)
- *Hern v. Barnhart*, 262 F. Supp. 2d 1033, 1037 (N.D. Cal. 2003)
- *Crawford v. Astrue*, 586 F.3d 1142, 1148-49 (9th Cir. 2009) (en banc)
- *Vazquez v. Commissioner of Social Security*, No. 1:17-CV-1646-JLT, 2020 WL 2793059, at *2 (E.D. Cal. May 29, 2020)
- *Ortega v. Commissioner of Social Security*, No. 1:12-cv-01030-AWI-SAB, 2015 WL 5021646, at *3 (E.D. Cal. Aug. 21, 2015)
- *Thomas v. Colvin*, No. 1:11-cv-01291-SKO, 2015 WL 1529331, at *3 (E.D. Cal. Apr. 3, 2015)
- *Boyle v. Colvin*, No. 1:12-cv-00954-SMS, 2013 WL 6712552, at *2 (E.D. Cal. Dec. 19, 2013)
- *Jamieson v. Astrue*, No. 1:09-cv-00490-LJO-DLB, 2011 WL 587096, at *2 (E.D. Cal. Feb. 9, 2011)

OPINION

1 UNITED STATES DISTRICT COURT 2 EASTERN DISTRICT OF CALIFORNIA 3 4 Emelia Gallo, CASE NO. 1:22-cv-00152-GSA 5 Plaintiff, 6 ORDER GRANTING MOTION FOR ATTORNEY v. FEES PURSUANT TO 42 U.S.C. 406(b) 7 (Doc. 22) 8 Commissioner of Social Security, 9 Defendant. 10 11 Plaintiff's counsel Francesco Benavides seeks an award of attorney fees pursuant to 42 U.S.C. § 12 406(b).

13 I. Background 14 Plaintiff entered into a contingent fee agreement with counsel which provides for attorney fees of 15 up to 25% of the past due benefits awarded. Doc. 22-3. The agreement also provides that counsel would 16 seek fees pursuant to the Equal Access to Justice Act (EAJA), fees which would be refunded in the event 17 of an award of past due benefits and payment of the 25% contingency fee.

Id. 18 Plaintiff filed a complaint in this Court on February 4, 2021, appealing the Commissioner's 19 decision denying her application for benefits. Plaintiff filed her motion for summary judgment on June 20 10, 2022. Doc. 15. Defendant responded on July 13, 2022. Doc. 16. Plaintiff replied on July 26, 2022. 21 Doc. 17.

On March 22, 2023, the Court issued an opinion and order granting Plaintiff's motion and 22 remanding the matter for further proceedings. Doc. 18. Counsel was awarded EAJA fees in an amount of 23 \$7,000. Doc. 21. 24 On remand the agency determined that Plaintiff was disabled and entitled to past due benefits 25 (Doc. 22-1 at 1) from which the agency withheld 25% (\$22,051.75)1 for potential payment to counsel.

Id. 26 at 2. 27 1 II. Legal Standard 2 An attorney may seek an award of fees for representation of a Social Security claimant who is 3 awarded benefits: 4 Whenever a court renders a judgment

favorable to a claimant under [42 USC § 401, et seq] who was represented before the court by an attorney, the court may determine and allow 5 as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such 6 judgment...

7 42 U.S.C. § 406(b)(1)(A); see also *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002) (Section 406(b) 8 controls fees awarded for representation of Social Security claimants). A contingency fee agreement is 9 unenforceable by the Court if it provides for fees exceeding the statutory amount. *Gisbrecht*, 535 U.S. at 10 807 (“Congress has provided one boundary line: Agreements are unenforceable to the extent that they 11 provide for fees exceeding 25 percent of the past-due benefits.”).

12 District courts “have been deferential to the terms of contingency fee contracts § 406(b) cases.”

13 *Hern v. Barnhart*, 262 F.Supp.2d 1033, 1037 (N.D. Cal. 2003). However, the Court must review 14 contingent-fee arrangements “as an independent check, to assure that they yield reasonable results in 15 particular cases.” *Gisbrecht*, 535 U.S. at 807.

In doing so, the Court should consider “the character of the 16 representation and the results the representative achieved.” *Id.* at 808. In addition, the Court should 17 consider whether the attorney performed in a substandard manner or engaged in dilatory conduct or 18 excessive delays, and whether the fees are “excessively large in relation to the benefits received.” 19 *Crawford v. Astrue*, 586 F.3d 1142, 1149 (9th Cir.

2009) (en banc); *Vazquez v. Com'r of Soc. Sec.*, No. 20 1:17-CV-1646-JLT, 2020 WL 2793059, at *2 (E.D. Cal. May 29, 2020). 21 III. Analysis 22 Here, Plaintiff was represented by experienced counsel and achieved a favorable result, namely an 23 order of remand, entry of judgment, and ultimately a substantial award of past due benefits. There is no 24 indication that counsel engaged in dilatory conduct, excessive delay, or substandard performance.

25 Counsel’s itemized bill reflects 30.9 hours of attorney time for tasks including reviewing the 26 administrative record and drafting the motion for summary judgment, which is a reasonable time 27 expenditure for the performance of those tasks. Doc. 22-4. 1 The effective hourly rate amounts to \$711.97 per hour.

Although this is a substantial hourly rate, 2 the fee award would not amount to a windfall. Unlike fee motions governed entirely by the lodestar 3 method, in contingency fee matters pursuant to section 406(b) the lodestar is merely a guidepost, and a 4 comparatively high effective hourly rate is generally warranted to compensate counsel for the risk assumed 5 in representing social security claimants.

See *Crawford v. Astrue*, 586 F.3d 1142, 1148 (9th Cir. 2009). 6 The \$22,000 total amount is also consistent with total contingent fee awards granted under section 7 406(b). See, e.g., *Ortega v.*

Comm'r of Soc. Sec., No. 1:12-cv-01030-AWI-SAB, 2015 WL 5021646, at 8 *3 (E.D. Cal. Aug. 21, 2015) (\$24,350); Thomas v. Colvin, No. 1:11-cv-01291-SKO, 2015 WL 1529331, 9 at *3 (E.D.

Cal. Apr. 3, 2015) (\$44,603.50); Boyle v. Colvin, No. 1:12-cv-00954-SMS, 2013 WL 10 6712552, at *2 (E.D. Cal. Dec. 19, 2013) (\$20,577.57); Jamieson v. Astrue, No. 1:09-cv-00490-LJO-DLB, 11 2011 WL 587096, at *2 (E.D. Cal. Feb. 9, 2011) (\$34,500). 12 Considering the character of the representation, the result achieved, and the fee amounts awarded 13 in similar cases, the request here is reasonable.

14 Accordingly, it is ORDERED as follows: 15 1. Counsel's motion for attorney fees pursuant to 42 U.S.C. 406(b) (Doc. 22) is granted. 16 2. The Commissioner shall certify a payment of a gross award in the amount of \$22,000 17 to: Francesco Benavides 18 3. Upon receipt of this sum, Francesco Benavides shall remit directly to Plaintiff Emilia Gallo 19 the EAJA fees previously awarded in the amount of \$7,000.

20 21 22 23 IT IS SO ORDERED. 24 Dated: March 27, 2025 /s/ Gary S. Austin 25 UNITED STATES MAGISTRATE JUDGE 26 27