

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
OKLAHOMA

Marcus Dwayne Cobb o/b/o Kathy Michelle Cobb, deceased v. Frank  
Bisignano, Acting Commissioner of Social Security

Cobb · No. 23-cv-407-DES · Decided December 11, 2025

SUMMARY

The United States District Court for the Eastern District of Oklahoma granted counsel's motion for attorney fees under 42 U.S.C. § 406(b) after a successful appeal of the denial of Social Security disability benefits. The court awarded \$18,500.00, found the request timely and reasonable, and ordered counsel to refund the previously awarded EAJA fees to the plaintiff.

CASE DETAILS

|                    |                                                                                                                                                                                                                                                                                            |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT              | United States District Court for the Eastern District of Oklahoma                                                                                                                                                                                                                          |
| JURISDICTION       | United States District Court for the Eastern District of Oklahoma                                                                                                                                                                                                                          |
| DECIDED            | December 11, 2025                                                                                                                                                                                                                                                                          |
| DOCKET             | 23-cv-407-DES                                                                                                                                                                                                                                                                              |
| DISPOSITION        | other                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE | Plaintiff's counsel moved for an award of attorney fees under 42 U.S.C. § 406(b) after the court had reversed the Commissioner's adverse disability determination and remanded for further proceedings, resulting in an award of past-due benefits.                                        |
| STANDARD OF REVIEW | The court independently reviewed the contingency-fee request to determine whether it produced a reasonable result under 42 U.S.C. § 406(b), considering the character and results of representation, any dilatory or substandard conduct, and whether the fee would constitute a windfall. |
| PRECEDENTIAL VALUE | Unpublished federal district court opinion; precedential status is not identified in the source.                                                                                                                                                                                           |
| PARTIES            | Marcus Dwayne Cobb o/b/o Kathy Michelle Cobb, deceased v. Frank Bisignano, Acting Commissioner of Social Security                                                                                                                                                                          |

TOPICS

attorney fees administrative law civil procedure remedies

## PRACTICE AREAS

Social Security attorney fees administrative law civil procedure

## QUESTIONS PRESENTED

1. Whether counsel's motion for attorney fees under 42 U.S.C. § 406(b) was filed within a reasonable time.
2. Whether the requested \$18,500 fee was reasonable under § 406(b), the contingency-fee agreement, and the factors identified in *Gisbrecht v. Barnhart*.
3. Whether counsel must refund the previously awarded EAJA fee to the claimant after receiving the § 406(b) award.

## HOLDINGS

1. A motion for attorney fees under 42 U.S.C. § 406(b) must be filed within a reasonable time of the Commissioner's decision awarding benefits, and counsel's motion filed 51 days after the notices of award was timely under the circumstances.
2. The requested \$18,500 fee was reasonable and did not exceed the 25% statutory or contractual limit.
3. After receiving the § 406(b) fee, counsel must refund to the claimant the smaller previously awarded EAJA fee.

## KEY QUOTATIONS

“§ 406(b) nonetheless calls for the Court to function as “an independent check” and review contingency-fee arrangements “to assure that they yield reasonable results in particular cases.”” (at 3)

“IT IS THEREFORE ORDERED that the Motion for Attorney Fees Under 42 U.S.C. § 406(b) (Docket No. 24) is GRANTED, Counsel is awarded \$18,500.00 as a reasonable attorney fee pursuant to 42 U.S.C. § 406(b) for Counsel’s representation of Plaintiff before this Court, and the Commissioner is authorized to release to Counsel directly the balance of any of Plaintiff’s past-due benefits in his possession up to said amount.” (at 5)

## FACTUAL BACKGROUND

The court's prior remand led to a favorable disability determination for Kathy Michelle Cobb, who was found disabled from December 22, 2019, until her death on July 19, 2022. The claimant and her auxiliaries were awarded total past-due benefits of \$111,117.00, from which the Commissioner withheld \$27,779.25 for representative and attorney fees. Counsel spent 18.5 attorney hours and 2.9 paralegal hours pursuing the federal-court appeal and requested \$18,500, representing 16.65% of the total past-due benefits.

## PROCEDURAL HISTORY

Plaintiff appealed the Commissioner's denial of benefits. On April 30, 2024, the court reversed the Commissioner's decision and remanded for further proceedings. On remand, the Commissioner found the

claimant disabled for a specified period and awarded past-due benefits. The court had previously awarded \$4,909.50 in EAJA fees, and counsel then sought \$18,500 in fees under § 406(b).

#### DISPOSITION

other

#### CASES CITED

- *Gisbrecht v. Barnhart*, 535 U.S. 789, 796, 807-08 (2002)
- *McGraw v. Barnhart*, 450 F.3d 493, 505 (10th Cir. 2006)
- *Harbert v. Astrue*, No. CIV-06-90-SPS, 2010 WL 3238958, at \*1 n.4 (E.D. Okla. Aug. 16, 2010)
- *Wrenn ex rel. Wrenn v. Astrue*, 525 F.3d 931, 932-34 (10th Cir. 2008)
- *Wilson v. Kijakazi*, No. CIV-20-202-SPS, 2023 WL 2813623, at \*2 (E.D. Okla. Apr. 4, 2023)
- *Hovey v. O'Malley*, No. CIV-20-444-JFH-GLJ, 2024 WL 647649, at \*2 (E.D. Okla. Jan. 29, 2024), report and recommendation adopted by, 2024 WL 643220 (E.D. Okla. Feb. 15, 2024)
- *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986)