

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
OHIO, WESTERN DIVISION AT DAYTON

Kevin D. v. Commissioner of Social Security

Kevin D. · No. 3:24-cv-00082 · Decided February 6, 2026

SUMMARY

The United States District Court for the Southern District of Ohio granted Plaintiff’s motion for attorney’s fees under 42 U.S.C. § 406(b)(1) following a successful Social Security disability appeal and remand. The court awarded counsel \$10,650.25, finding the contingency-based fee reasonable and not a windfall. Counsel was ordered to remit any previously awarded EAJA fees to Plaintiff to prevent double recovery.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                       |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Southern District of Ohio, Western Division at Dayton                                                                                                                                                            |
| WRITING FOR THE COURT | Kimberly A. Jolson                                                                                                                                                                                                                                    |
| JURISDICTION          | United States District Court for the Southern District of Ohio, Western Division at Dayton                                                                                                                                                            |
| DECIDED               | February 6, 2026                                                                                                                                                                                                                                      |
| DOCKET                | 3:24-cv-00082                                                                                                                                                                                                                                         |
| DISPOSITION           | other                                                                                                                                                                                                                                                 |
| PROCEDURAL POSTURE    | Plaintiff's counsel moved for an award of attorney's fees under 42 U.S.C. § 406(b)(1) after the court reversed the Commissioner's non-disability determination, remanded under sentence four of 42 U.S.C. § 405(g), and previously awarded EAJA fees. |
| STANDARD OF REVIEW    | Under 42 U.S.C. § 406(b)(1), the court independently reviews a contingency-fee agreement to determine whether the requested fee is reasonable, does not exceed 25 percent of past-due benefits, and does not produce a windfall.                      |
| PRECEDENTIAL VALUE    | Unpublished district court opinion; nonprecedential                                                                                                                                                                                                   |
| PARTIES               | Kevin D. v. Commissioner of Social Security                                                                                                                                                                                                           |

TOPICS

attorney fees

judicial review of agency action

administrative law

remedies

civil procedure

## PRACTICE AREAS

Social Security

administrative law

attorney fees

civil procedure

## QUESTIONS PRESENTED

1. Whether Plaintiff's counsel was entitled to \$10,650.25 in attorney's fees under 42 U.S.C. § 406(b)(1).
2. Whether the requested contingency fee was reasonable and did not constitute a windfall.
3. Whether counsel was required to remit to Plaintiff any EAJA fees previously received to prevent double recovery.

## HOLDINGS

1. The court may award attorney's fees under § 406(b)(1) following a successful Social Security disability appeal when the fee does not exceed 25 percent of past-due benefits and is reasonable for the services rendered. The requested \$10,650.25 fee satisfied those requirements.
2. Because counsel previously received EAJA fees, counsel must remit to Plaintiff any amount received under the EAJA to prevent double recovery.

## KEY QUOTATIONS

*“The Social Security Act “does not displace contingen[cy]-fee agreements,” but rather “calls for the court’s review of such arrangements as an independent check, to assure that they yield reasonable results in particular cases.””* (Opinion and Order, § II)

*“A windfall can never occur when “the amount of the fee permitted under the contract is less than twice the standard rate for such work in the relevant market.””* (Opinion and Order, § II)

*“Because he previously received attorney’s fees under the EAJA, counsel is ORDERED to remit to Plaintiff any amount received under the EAJA to prevent double recovery of fees.”* (Opinion and Order, § IV)

## FACTUAL BACKGROUND

Plaintiff obtained a reversal of the Commissioner's non-disability finding and a sentence-four remand in his Social Security case. Past-due benefits totaled \$79,401.00, making 25 percent of those benefits \$19,850.25. The agency approved \$9,200.00 for counsel's post-litigation representation, leaving \$10,650.25 requested for the federal-court representation, which involved 27.6 attorney hours and 5.7 paralegal hours.

## PROCEDURAL HISTORY

Kevin D. filed an action seeking judicial review of the Social Security Administration's denial of benefits. On August 27, 2024, the court entered judgment for Plaintiff, reversed the Commissioner's non-disability finding, and remanded under sentence four of § 405(g). The court later awarded \$7,014.31 in EAJA fees. Plaintiff's counsel then sought \$10,650.25 under § 406(b)(1); the Commissioner did not oppose the motion, and the court granted it subject to remittance of any EAJA amount to Plaintiff.

## DISPOSITION

other

## CASES CITED

- Jankovich v. Brown, 886 F.2d 867 (6th Cir. 1989)
- Gisbrecht v. Barnhart, 535 U.S. 789, 802 (2002)
- Rodriquez v. Brown, 865 F.2d 739, 746 (6th Cir. 1989)
- Hayes v. Secretary of Health & Human Services, 923 F.2d 418, 422 (6th Cir. 1990)
- Jearame B. v. Commissioner of Social Security, No. 1:21-cv-228, 2023 WL 1861429, at \*2 (S.D. Ohio Feb. 9, 2023)
- Amanda Mary B. v. Commissioner of Social Security, No. 1:20-CV-1036, 2024 WL 3337772, at \*2-3 (S.D. Ohio July 9, 2024)
- Amanda B. v. Commissioner of Social Security, No. 1:20-CV-1036, 2024 WL 3696373 (S.D. Ohio Aug. 7, 2024)
- Twyla D. v. Commissioner of Social Security Administration, No. 3:19-CV-368, 2025 WL 715510, at \*2 (S.D. Ohio Mar. 6, 2025)