UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

# Christina Herrera v. Commissioner of Social Security Administration

Herrera · No. CV-18-02658-PHX-KML · Decided January 29, 2026

## SUMMARY

The United States District Court for the District of Arizona grants plaintiff's counsel's motion for attorneys' fees under 42 U.S.C. § 406(b) in the amount of $46,258.75. The court finds the 25% contingent-fee agreement reasonable and orders counsel to refund the $8,164.80 previously awarded under the Equal Access to Justice Act.

## CASE DETAILS

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|---|---|
| COURT | United States District Court for the District of Arizona |
| WRITING FOR THE COURT | Krissa M. Lanham |
| JURISDICTION | United States District Court for the District of Arizona |
| DECIDED | January 29, 2026 |
| DOCKET | CV-18-02658-PHX-KML |
| DISPOSITION | other |
| PROCEDURAL POSTURE | Plaintiff's counsel moved for an award of attorney's fees under 42 U.S.C. § 406(b) after the court had reversed and remanded the Social Security Administration's decision and the agency later awarded past-due benefits. |
| STANDARD OF REVIEW | Reasonableness review of a contingent-fee agreement and requested fee under 42 U.S.C. § 406(b). |
| PRECEDENTIAL VALUE | unknown |

## TOPICS

remedies · administrative law · judicial review of agency action

## PRACTICE AREAS

Social Security · administrative law · attorney's fees

## QUESTIONS PRESENTED

1. Whether the 25-percent contingent-fee agreement and the resulting request for $46,258.75 constituted a reasonable fee under 42 U.S.C. § 406(b).
2. Whether counsel was required to refund the previously awarded Equal Access to Justice Act fees to Herrera after receiving the § 406(b) fee.

### HOLDINGS

1. The requested fee of $46,258.75 was reasonable and could be awarded under 42 U.S.C. § 406(b) because it complied with the 25-percent contingent-fee agreement, there was no evidence of fraud, overreaching, poor performance, or delay, and the effective hourly rate was reasonable in light of the work performed and the risk of nonrecovery.
2. After receiving the § 406(b) fee, plaintiff's counsel must refund to Herrera the $8,164.80 previously awarded under the Equal Access to Justice Act.

### KEY QUOTATIONS

> *"When an attorney files a request for fees under § 406(b), the court must "look[] first to the contingent-fee agreement, then test[] it for reasonableness.""* (at 2)

> *"There is "no evidence of fraud or overreaching in the making of the 25% contingent-fee agreement[]," so the 25% permitted by the agreement is an appropriate starting point."* (at 2)

### FACTUAL BACKGROUND

Herrera entered a contingency-fee agreement providing that attorney Mark Caldwell would receive 25 percent of past-due benefits for federal-court representation. After the court remanded the administrative decision, Herrera and her child were awarded benefits, and the agency withheld $58,233.75 for attorney fees. Caldwell sought $46,258.75 under § 406(b), representing the withheld amount less $11,975 paid to administrative counsel, based on 40.5 hours of work.

### PROCEDURAL HISTORY

Herrera applied for disability benefits in 2014, and an Administrative Law Judge issued a partially favorable decision. Herrera filed this federal action in 2018. In April 2019, the court reversed the ALJ's decision and remanded for further proceedings, and later awarded counsel $8,164.80 under the Equal Access to Justice Act. After Herrera and her child received benefits, the agency withheld $58,233.75 for attorney fees. Counsel sought $46,258.75 under § 406(b), after subtracting $11,975 in fees paid for administrative representation. The court granted the motion and required counsel to refund the EAJA award to Herrera.

### DISPOSITION

other

### CASES CITED

- Crawford v. Astrue, 586 F.3d 1142 (9th Cir. 2009)

OPINION

1 WO 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF ARIZONA 8 9 Christina Herrera, No. CV-18-02658-PHX-KML 10 Plaintiff, ORDER 11 v. 12 Commissioner of Social Security Administration, 13 Defendant. 14 15 In 2014, plaintiff Christina Herrera filed an application for disability benefits. (Doc. 16 15 at 2.) An Administrative Law Judge later issued a partially-favorable decision.

(Doc. 15 17 at 2.) Dissatisfied with that outcome, in July 2018, Herrera signed a contingency fee 18 agreement with attorney Mark Caldwell. That agreement contemplated Caldwell would 19 represent Herrera "in a federal court action for judicial review of [the] decision" denying 20 her claim for disability benefits. (Doc. 24-2 at 2.)

The agreement set Caldwell's fee as an 21 amount "equal to twenty-five percent (25%) of all past-due benefits awarded to [Herrera] 22 and any other individuals(s) entitled to benefits by reason of the award to [Herrera]." (Doc. 23 24-2 at 2.) One month after the agreement was executed, Caldwell filed the present suit. 24 In April 2019 the court reversed the Administrative Law Judge's decision and 25 remanded for further proceedings.

(Doc. 18.) A few months later, the court awarded 26 Caldwell $8,164.80 in attorneys' fees under the Equal Access to Justice Act. (Doc. 21.) 27 For unknown reasons the additional proceedings took a significant amount of time, but 28 eventually Herrera and her child were awarded benefits.

The agency withheld 25% of the 1 awards (i.e., $58,233.75) to pay Caldwell. (Doc. 24-1 at 4, 9.) The agency also awarded 2 Herrera's administrative counsel $11,975.00 for the work performed during the agency 3 proceedings. (Doc. 24 at 2.) Caldwell now seeks an award of $46,258.75 in attorneys' fees, 4 calculated as the 25% withheld by the agency ($58,233.75) minus the administrative 5 attorneys' fees ($11,975.00) already paid.

(Doc. 24 at 1.) According to Caldwell's billing 6 records, he performed 40.5 hours of work in this case. The amount he seeks therefore 7 represents an effective hourly rate of $1,142.19. The commissioner "neither supports nor 8 opposes" Caldwell's request. (Doc. 27 at 3.) 9 The relevant statute allows the court to award Caldwell "a reasonable fee for [his] 10 representation, not in excess of 25 percent of the total of the past-due benefits." 42 U.S.C. 11 § 406(b).

When an attorney files a request for fees under § 406(b), the court must "look[] 12 first to the contingent-fee agreement, then test[] it for reasonableness." Crawford v. Astrue, 13 586 F.3d 1142, 1149 (9th Cir. 2009) (simplified). There is no "definitive list of factors that 14 should be considered in determining whether a fee is reasonable or how those factors 15 should be weighed." Id. at 1151.

But the court's reasonableness inquiry may look to 16 "substandard performance, delay, or benefits that are not in proportion to the time spent on 17 the case." Id. 18 Here, the agreement allows Caldwell to recover 25% of past-due benefits. There is “no evidence of fraud or overreaching in the making of the 25% contingent-fee agreement[],” so the 25% permitted by the agreement is an appropriate starting point.

Id. The only other question is whether the amount the agreement contemplates Caldwell be awarded is reasonable. There is no evidence of poor performance or delay by Caldwell. And Caldwell’s effective hourly rate of $1,149.19 is reasonable based on the work Caldwell performed and the risk that no benefits would be awarded. / / / / IT IS ORDERED the Motion for Attorneys’ Fees under 42 U.S.C. § 406(b) (Doc.

24)is GRANTED in the amount of $46,258.75. IT IS FURTHER ORDERED plaintiff's counsel shall, after receipt of the above- awarded fee, refund to plaintiff all fees awarded under the EAJA, in the amount of $8,164.80. Dated this 29th day of January, 2026. AA Ata Ve OC ft □□ Honorable Krissa M. Lanham United States District Judge



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