

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
OKLAHOMA

Mark Francis Augare v. Commissioner of the Social Security
Administration

Augare · No. CIV-23-206-JAR · Decided May 12, 2026

SUMMARY

The United States District Court for the Eastern District of Oklahoma granted Plaintiff’s counsel’s motion for attorney fees under 42 U.S.C. § 406(b). The court awarded \$21,918.75, payable from withheld past-due Social Security benefits, and directed counsel to refund the smaller of the EAJA award or the § 406(b) fee to Plaintiff’s estate.

CASE DETAILS

COURT	United States District Court for the Eastern District of Oklahoma
WRITING FOR THE COURT	Jason A. Robertson
JURISDICTION	United States District Court for the Eastern District of Oklahoma
DECIDED	May 12, 2026
DOCKET	CIV-23-206-JAR
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff's counsel moved under 42 U.S.C. § 406(b) for an award of attorney fees from past-due Social Security benefits after the court granted an unopposed motion to remand and Plaintiff was subsequently awarded benefits.
STANDARD OF REVIEW	The court reviewed the contingency-fee arrangement and contemporaneous time and expense records to determine whether the requested fee was reasonable and necessary, and reviewed the timeliness of the request under Fed. R. Civ. P. 60(b)(6).
PRECEDENTIAL VALUE	Unpublished district court opinion; precedential status is not established in the source.
PARTIES	Mark Francis Augare v. Commissioner of the Social Security Administration

TOPICS

attorney fees

administrative procedure act

civil procedure

remedies

PRACTICE AREAS

Social Security

attorney fees

administrative law

civil procedure

QUESTIONS PRESENTED

1. Whether counsel's requested award of \$21,918.75 under 42 U.S.C. § 406(b) was permissible under the 25% statutory cap and the contingency-fee agreement.
2. Whether the requested § 406(b) fee was reasonable in light of the results obtained and the time and expense records.
3. Whether counsel's fee motion was timely under Fed. R. Civ. P. 60(b)(6).
4. Whether counsel was required to refund the smaller of the EAJA award and the § 406(b) award to Plaintiff's estate.

HOLDINGS

1. An attorney's fee award under 42 U.S.C. § 406(b) may not exceed 25% of the claimant's past-due benefits, and the requested \$21,918.75 fee complied with both the statutory limitation and the contingency-fee agreement.
2. The court may award the full 25% fee requested when review of the contingency-fee arrangement and contemporaneous time and expense records shows that the fee is reasonable and the work was necessary in light of the result obtained.
3. A motion for attorney fees under § 406(b) may be pursued under Fed. R. Civ. P. 60(b)(6) and is timely when filed within a reasonable time after the Commissioner's decision awarding benefits.
4. When counsel receives both an EAJA award and a § 406(b) award for the same representation, counsel must refund to the claimant's estate the smaller of the two amounts.

KEY QUOTATIONS

“The only condition upon the full award of 25% is a requirement that the court review contingency fee arrangements “to assure that they yield reasonable results in particular cases.”” (at 2)

“This Court cannot find the delay which occurred in this case warrants the draconian result of denying an award of fees.” (at 3)

FACTUAL BACKGROUND

Counsel represented Plaintiff in an appeal from the denial of Social Security benefits under a contingency-fee agreement providing for 25% of any past-due benefits awarded. After the Commissioner agreed to remand, Plaintiff was found disabled on remand and awarded \$87,675.00 in past-due benefits. Counsel had previously received \$6,565.50 under the Equal Access to Justice Act and sought \$21,918.75 under 42 U.S.C. § 406(b).

PROCEDURAL HISTORY

Plaintiff appealed an adverse Social Security benefits decision and filed an opening brief. The Commissioner moved to remand, and the court granted the motion. On remand, Plaintiff was found disabled and awarded \$87,675.00 in past-due benefits. Plaintiff's counsel then moved for \$21,918.75 in fees under 42 U.S.C. § 406(b), and the court granted the motion.

DISPOSITION

other

CASES CITED

- *Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002)
- *Wrenn v. Astrue*, 525 F.3d 931, 937-938 (10th Cir. 2008)
- *McGraw v. Barnhart*, 450 F.3d 493, 505 (10th Cir. 2006)
- *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986)

OPINION

Augare

PER CURIAM.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF OKLAHOMA

MARK FRANCIS AUGARE,)

) Plaintiff,)) v.) Case No. CIV-23-206-JAR)

COMMISSIONER OF THE)

SOCIAL SECURITY)

ADMINISTRATION,)

) Defendant.)

OPINION AND ORDER

This matter comes before this Court on Motion for Attorney Fees Under 42 U.S.C. § 406(b) filed by Gayle L. Troutman with the firm Troutman and Troutman, the attorney of record for Plaintiff (Docket Entry No. 29). Counsel requests that she be awarded fees for legal work pursuant to 42 U.S.C. § 406(b) in the amount of \$21,918.75. Counsel was employed by Plaintiff to appeal the adverse decision rendered by Administrative Law Judge presiding over the request for benefits. To that end, Counsel entered into a contract for compensation with Plaintiff, providing for the payment of a fee equal to 25% of any past due benefits ultimately awarded to Plaintiff. Such contracts are recognized as valid under the prevailing case authority. *Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002). Counsel filed an opening brief to set out Plaintiff's position in this appeal to which Defendant responded with an unopposed motion to remand, which was granted by this Court. Consequently, Plaintiff was successful in this appeal. As a result, Plaintiff was awarded attorney's fees in accordance with the Equal Access to Justice Act ("EAJA") for the efforts before

this Court in the amount of \$6,565.50. On remand, Plaintiff was found to be disabled and was awarded past due benefits in the amount of \$87,675.00. The amount awarded to counsel for successfully prosecuting an appeal of a denial of Social Security benefits and obtaining benefits for a claimant may not exceed 25% of past due benefits. 42 U.S.C. § 406(b)(1)(A). As in this case, Defendant is authorized to withhold up to 25% of the past due benefits awarded to a claimant for payment directly to the claimant's attorney. 42 U.S.C. § 406(a)(4). The Tenth Circuit Court of Appeals determined that the 25% amount is separate and apart from the amount awarded at the agency level under 42 U.S.C. § 406(a). *Wrenn v. Astrue*, 525 F.3d 931, 937-938 (10th Cir. 2008). The only condition upon the full award of 25% is a requirement that the court review contingency fee arrangements "to assure that they yield reasonable results in particular cases." *Id.* at 938 (citations omitted). Counsel's requested fees do not exceed either the amount contracted for in the contingency fee agreement or the limitations of §406(b). Defendant generally does not take a position on awarding the amount requested, stating that the Social Security Administration has no financial stake in the result. Despite the fact the source for Counsel's compensation is a contingency fee contract, this Court has reviewed the contemporaneous time and expense records based upon the admonishment of the Tenth Circuit to do so and finds the time expended to be reasonable and necessary in consideration of the result obtained. This Court has evaluated Counsel's request for its timeliness. In seeking an award under § 406(b), an attorney is required to employ the provisions of Fed. R. Civ. P. 60(b)(6). *McGraw v. Barnhart*, 450 F.3d 493, 505 (10th Cir. 2006). While relief under this rule is considered extraordinary and reserved for exceptional circumstances, substantial justice is served by permitting its use in the circumstance faced by counsel in seeking these fees. *Id.* To that end, any fee request pursued under §406(b) should be filed "within a reasonable time of the Commissioner's decision awarding benefits." *Id.* (citation omitted). In this case, Notice of Award was issued by Defendant on October 20, 2025. Counsel filed her request for compensation on November 6, 2025. This Court cannot find the delay which occurred in this case warrants the draconian result of denying an award of fees. Therefore, the request is considered timely. IT IS THEREFORE ORDERED that Motion for Attorney Fees Under 42 U.S.C. § 406(b) filed by Gayle L. Troutman with the firm Troutman and Troutman, the attorney of record for Plaintiff (Docket Entry No. 29) is hereby GRANTED. Plaintiff's counsel is awarded fees in the amount of \$21,918.75. Defendant is directed to pay this fee directly to counsel from the amount of past due benefits withheld for that purpose. In addition, Plaintiff's counsel shall refund to Plaintiff's estate the smaller amount between any EAJA fees already awarded and the § 406(b) fees awarded in this decision to Plaintiff. *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986). IT IS SO ORDERED this 12th day of May, 2026. _____

JASON A. ROBERTSON

UNITED STATES MAGISTRATE JUDGE

