

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PRECEDENTIAL VALUE	Unpublished district court opinion; precedential status is not established in the source.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)