

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Jesse Wampole v. Commissioner of Social Security Administration

No. CV-24-00919-PHX-DJH, United States District Court for the District of Arizona (April 9, 2026)

SUMMARY

The United States District Court for the District of Arizona granted a motion for attorney fees under 42 U.S.C. § 406(b) following a favorable Social Security disability benefits decision on remand. The court approved a total fee of \$9,258.50, representing 25% of past-due benefits, and awarded counsel the net amount of \$1,108.50 after subtracting \$8,150.00 previously awarded under the Equal Access to Justice Act.

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	Diane J. Humetewa
JURISDICTION	United States District Court for the District of Arizona
DECIDED	April 9, 2026
DOCKET	CV-24-00919-PHX-DJH
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for attorney fees under 42 U.S.C. § 406(b) after obtaining a favorable decision on remand from the Social Security Administration.
STANDARD OF REVIEW	The court reviewed the requested contingent fee for compliance with the statutory 25-percent limit, consistency with the fee agreement, and reasonableness under <i>Gisbrecht v. Barnhart</i> .
PRECEDENTIAL VALUE	unpublished
PARTIES	Jesse Wampole v. Commissioner of Social Security Administration

TOPICS

- attorney fees
- judicial review of agency action
- administrative law
- remedies
- civil procedure

PRACTICE AREAS

- Social Security
- administrative law
- attorney fees

QUESTIONS PRESENTED

1. Whether the requested fee of \$9,258.50 was permissible and reasonable under 42 U.S.C. § 406(b) and the contingent-fee agreement.
2. Whether the previously awarded \$8,150.00 in EAJA fees should be deducted from the § 406(b) award rather than separately refunded by counsel.

HOLDINGS

1. The requested \$9,258.50 fee was within the statutory 25-percent limit, consistent with the fee agreement, and reasonable under *Gisbrecht*; the court therefore approved the § 406(b) fee.
2. The court awarded counsel \$1,108.50, the net amount of the \$9,258.50 § 406(b) fee after deducting the previously awarded \$8,150.00 in EAJA fees.

KEY QUOTATIONS

“Fees are payable out of, and not in addition to, the amount of the past-due benefits.” (at 1)

FACTUAL BACKGROUND

An ALJ determined that Nikki Wampole was not disabled, and the Appeals Council denied review. After Nikki Wampole died, Jesse Wampole continued the matter as her next of kin and obtained a stipulated remand from the district court. On remand, the agency issued a favorable decision and determined that \$9,258.50, representing 25 percent of approximately \$37,034.00 in past-due benefits, was available for representative fees.

PROCEDURAL HISTORY

Nikki Wampole's applications for Disability Insurance benefits and Supplemental Security Income were denied by an ALJ, and the Appeals Council denied review. After Nikki Wampole's death, Jesse Wampole proceeded on her behalf and sought judicial review. The parties stipulated to remand, which the court granted, and the court awarded \$8,150.00 in Equal Access to Justice Act fees and costs. After a favorable decision on remand, plaintiff sought \$9,258.50 in attorney fees under § 406(b), and the court awarded counsel the net amount of \$1,108.50 after deducting the EAJA award.

DISPOSITION

other

CASES CITED

- *Gisbrecht v. Barnhart*, 535 U.S. 789, 795-96, 807-08 (2002)

OPINION

Wampole

PER CURIAM.

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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 9 Jesse Wampole, No. CV-24-00919-PHX-DJH 10 Plaintiff, ORDER 11 v. 12 Commissioner of
Social Security Administration, 13 Defendant. 14 15 Plaintiff Jesse Wampole (“Plaintiff”) filed a
Motion for the Payment of Attorney 16 Fees pursuant to 42 U.S.C. § 406(b) (Doc. 19), seeking an
award of \$9,258.50. Plaintiff’s 17 Motion was backed by the Declaration of Rory Linerud,
Plaintiff’s counsel. (See Doc. 20). 18 The Social Security Administration (“SSA”) Commissioner
(the “Commissioner”) filed a 19 Response (Doc. 21) neither supporting nor opposing the award
sought. 20 I. Background 21 Nikki Wampole originally filed Applications for Social Security
Disability 22 Insurance benefits and Supplemental Security Income. (Doc. 1 at 2). On July 13,
2023, 23 The ALJ determined that Nikki Wampole was not disabled under the SSA. Ms. Wampole
24 passed away on January 4, 2024, and, as her next of kin, Plaintiff proceeded on Ms. 25
Wampole’s behalf. The ALJ’s decision became the final agency decision after the Appeals 26
Council denied review on March 27, 2024. (Id.). Plaintiff then sought judicial review of 27 the
ALJ’s decision. (See id.). On August 8, 2024, the parties filed a Stipulated Motion to 28 Remand,
requesting that the Court reverse and remand the ALJ’s decision for further 1 proceedings. (See
Doc. 13). The Court granted the parties’ Stipulated Motion on August 2 14, 2024. In accordance
with the parties’ stipulation, the Court also issued Plaintiff an 3 award of \$8,150.00 in attorney
fees and costs under the Equal Access to Justice Act 4 (“EAJA”). (Doc. 18). 5 On remand, Plaintiff
received a favorable decision, and, of the awarded amount, 6 \$9,258.50 was set aside to pay
Plaintiff’s representative. (Doc. 20-1 at 1). The SSA stated, 7 in their decision, that \$9,258.50
represented 25% of Plaintiff’s past due benefits. (Id.) 8 Therefore, it can be inferred that Plaintiff’s
total award was approximately \$37,034.00. 9 Pursuant to the fee agreement, Plaintiff’s counsel
now seeks \$9,258.50 in attorney fees. 10 II. Legal Standard

11 Section 4061 establishes “the exclusive regime for obtaining fees for successful
12 representation of Social Security benefits claimants.” *Gisbrecht v. Barnhart*, 535 U.S. 789, 13
795–96 (2002). Section 406(b) provides that “[w]hen a court renders a judgment 14 favorable
to a claimant . . . who was represented before the court by an attorney, the court 15 may determine
and allow as part of its judgment a reasonable fee for such representation, 16 not in excess of 25
percent of the total of the past-due benefits to which the claimant is 17 entitled by reason of such
judgment” 42 U.S.C. § 406(b)(1)(A). Fees are payable out 18 of, and not in addition to, the
amount of the past-due benefits. *Id.* Before awarding fees, 19 the Court must consider whether the
42 U.S.C. § 406(b) fee requested is (1) within the 20 statutory guidelines; (2) consistent with the
fee agreement; and (3) reasonable in light of 21 the contingent-fee agreement. *Gisbrecht*, 535 U.S.
at 807–08. 22 III. Discussion 23 Plaintiff’s counsel is seeking \$9,258.50 in § 496(b) fees. (Doc. 20
at 1). Upon 24 review of Plaintiff’s Memorandum, the time expended and the amounts charged by
25 Plaintiff’s counsel are reasonable in this case. First, the fees sought adhere to § 406(b)’s 26
guidelines. Plaintiff was awarded around \$37,034.00 in past-due benefits, and the 27 requested

\$9,258.50 in attorney fees equals 25% of the award. Second, this amount is 28 1 Unless where otherwise noted, all Section references are to the Social Security Act. 1 || consistent with the fee agreement which clearly states that Plaintiff's attorney would be 2|| entitled to 25% of past-due benefits. (Doc. 20-2 at 1). Lastly, the requested fee is 3|| reasonable given the contingent-fee agreement because it reflects the nature of the recovery. (Doc. 20 at 2). In sum, the Court finds that the amount requested is reasonable || under *Gisbrecht* and will award Plaintiff \$9,258.50 in § 406(b) fees. 6 However, Plaintiff requests that, instead of refunding the previous award of || \$8,150.00 under the EAJA, the EAJA be subtracted from \$9,258.50 requested here. (/d. at |} 2). As a result, net payable amount would be \$1,108.50. The SSA takes no position on this request. (Doc. 21 at 3). Therefore, the Court will grant Plaintiff's request and award Plaintiff's counsel \$1,108.50, which represents the net sum of the \$9,258.50 fee award 11 |} under § 406(b) minus the \$8,150.00 in fees received under the EAJA. 12 Accordingly, 13 IT IS HEREBY ORDERED that Plaintiff's Motion for Attorney Fees (Doc. 19) is granted under 42 U.S.C. § 406(b). Plaintiff's counsel Robin Larkin is awarded \$1,108.50 15} in attorney fees, representing the net amount of the total \$9,258.50 in §406(b) fees minus the \$8,150.00 in EAJA fees, to be paid out of the sum from Plaintiff's past-due benefits. 17 Dated this 9th day of April, 2026. 18 19 oC. . oe 20 norable' Diang4. Huntetewa 1 United States District Judge 22 23 24 25 26 27 28 _3-