

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Wendy Gay Morgan v. Commissioner of Social Security

Morgan · No. 1:21-cv-00694-HBK · Decided December 9, 2025

SUMMARY

The United States District Court for the Eastern District of California granted Plaintiff Wendy Gay Morgan's motion for attorney's fees under 42 U.S.C. § 406(b) following a sentence-four remand and an award of retroactive Social Security benefits. The court awarded \$33,483.43 and directed counsel to refund \$7,500.00 to Plaintiff to account for previously awarded EAJA fees.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 WENDY GAY MORGAN, Case No. 1:21-cv-00694-HBK 12 Plaintiff,
ORDER GRANTING PLAINTIFF'S MOTION FOR ATTORNEY'S FEES PURSUANT TO 42
13 v. U.S.C. § 406(b)1 14 COMMISSIONER OF SOCIAL (Doc. No. 37) SECURITY, 15
Defendant. 16 17 18 Jonathan O. Peña ("Counsel") of Peña & Bromberg, PC, attorney for Wendy
Gay Morgan 19 ("Plaintiff"), filed a motion seeking attorney's fees pursuant to 42 U.S.C. § 406(b)
on November 20 20, 2025.

(Doc. No. 37). Plaintiff was served with the motion and advised she had 14 days to 21 object. (Id.
at 1, 10). No opposition has been filed as of the date of this Order. (See docket). For 22 the
reasons set forth below, Plaintiff's motion for attorney's fees is granted in the amount of 23
\$33,483.43 subject to an offset of \$7,500.00 in fees previously awarded on February 14, 2023, 24
under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d).

(Doc. No. 36). 25 //// 26 1 Both parties have consented to the jurisdiction of a magistrate judge in
accordance with 28 U.S.C. 27 §636(c)(1). (Doc. No. 40). 28 1 I. BACKGROUND 2 On April 27,
2021, Plaintiff brought the underlying action seeking judicial review of a 3 final administrative
decision denying Plaintiff's claim for supplemental security income and 4 disability insurance
benefits under the Social Security Act.

(Doc. No. 1). On November 8, 2022, 5 the Court granted the parties' stipulation for voluntary
remand and remanded pursuant to sentence 6 four of 42 U.S.C. § 405(g) for further proceedings.
(Doc. No. 32). The Court entered an award 7 of \$7,500.00 for attorney fees under the Equal
Access to Justice Act ("EAJA") on February 14, 8 2023. (Doc. Nos. 35, 36). 9 On remand, the
Commissioner found Plaintiff disabled beginning in November 2017.

10 (Doc. No. 37-2 at 3). Plaintiff was awarded \$133,933.72 in retroactive benefits.² (Id.; Doc. No. 11 37 at 3). On November 20, 2025, Counsel filed this motion for attorney's fees in the amount of 12 \$33,483.43 with an offset of \$7,500.00 for EAJA fees already awarded. (Doc. No. 37 at 1-2). 13 Counsel argues these fees are reasonable because the contingency fee agreement, which Plaintiff 14 signed, permits Counsel to retain 25% of the past-due benefits, and the requested amount is 15 reasonable.

(Doc. No. 37 at 3-6; Doc. No. 37-3). Defendant filed a response to Plaintiff's motion 16 indicating they would neither support nor oppose Counsel's request for attorney fees pursuant to 17 24 U.S.C. § 406(b). (Doc. No. 42). 18 II. APPLICABLE LAW 19 Attorneys may seek a reasonable fee under the Social Security Act for cases in which they 20 have successfully represented social security claimants.

Section 406(b) allows: 21 Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, 22 the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of 23 the total of the past-due benefits to which the claimant is entitled....

24 42 U.S.C. § 406(b)(1)(A). Counsel for a plaintiff may recover attorneys' fees under both 42 25 U.S.C. § 406(b) and EAJA. *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002). Counsel, however, 26 must refund to the plaintiff the amount of the smaller fee. *Id.* 27 2 Plaintiff noted this amount is not included in the notice of award; rather, Plaintiff calculated the amount 28 by multiplying the 25% of past due benefits amount by four (\$33,483.43 x 4).

(Doc. No. 37 at 3). 1 Fees in social security cases "are usually set in contingency-fee agreements and are 2 payable from past-due benefits awarded to the claimant." *Biggerstaff v. Saul*, 840 F. App'x 69, 70 3 (9th Cir. 2020).

The fee is not borne by the Commissioner. *Crawford v. Astrue*, 586 F.3d 1142, 4 1147 (9th Cir. 2009). This provision's purpose is in part to "ensure that attorneys representing 5 successful claimants would not risk nonpayment of [appropriate] fees." *Gisbrecht*, 535 U.S. at 6 805 (internal quotations omitted). When weighing the adequacy of requested attorney's fees, 7 Courts should respect "the primacy of lawful attorney-client fee agreements." *Id.* at 793.

8 Counsel still bears the burden, however, of showing the requested fees are reasonable. *Id.* at 807. 9 In determining reasonableness, the court may consider the experience of the attorney, the results 10 they achieved, and whether there is evidence the attorney artificially increased the hours worked 11 or the hourly rate charged. *Id.* at 807-808; *Crawford*, 586 F.3d at 1151.

Generally, any 406(b) 12 award is offset by attorney fees granted under the EAJA. *Parrish v. Comm'r of Soc. Sec. Admin.*, 13 698 F.3d 1215, 1219 (9th Cir. 2012) 14 III. ANALYSIS 15 Here, Plaintiff signed a fee agreement agreeing to pay Counsel 25% of past due benefits 16 awarded to

Plaintiff. (Doc. No. 37-3). Counsel was ultimately successful in securing 17 \$133,933.72 in retroactive benefits for Plaintiff.

(Doc. No. 37-2). In support of this motion, 18 Counsel submitted a time sheet indicating the firm expended 39.9 hours in attorney time on this 19 matter. (Doc. No. 37-4). The time Counsel spent in successfully attaining Plaintiff's benefits 20 does not appear inflated. 21 Counsel's request for \$33,483.43 in fees for 39.9 hours of work results in an hourly rate of 22 \$839.18 for the attorney work.

(Doc. No. 37 at 5). Considering the effective rate of attorney 23 hours in cases involving social security contingency fee arrangements this rate appears consistent 24 with those approved by Ninth Circuit courts. *Crawford v. Astrue*, 586 F.3d 1142, 1153 (9th Cir. 25 2009) (explaining that the majority opinion found reasonable effective hourly rates equaling 26 \$519.00, \$875.00, and \$902.00) (J.

Clifton, concurring in part and dissenting in part); *Mayfield v. 27 Comm'r of Soc. Sec.*, No. 1:16-cv-01084-SAB, ECF No. 24 at 5 (E.D. Cal. March 19, 2020) 28 (approving hours rate of \$1,025.22 for paralegal and attorney time); *Biggerstaff v. Saul*, 840 Fed. 1 | App'x 69, 71 (9th Cir. 2020) (affirming \$1,400.00 per hour for combined attorney and paralegal 2 | work).

Attorney hourly rates inevitably rise as their experience increases, and Counsel has been 3 | practicing social security law for more than 13 years. (Doc. No. 37 at 8). Based on the 4 | foregoing, the Court finds the requested fees of \$33,483.43 are reasonable. *Gisbrecht*, 535 U.S. 5 | at 807-08. 6 An award of attorney's fees pursuant to 406(b) in the amount of \$33,483.43 is, therefore, 7 | appropriate.

An award of § 406(b) fees, however, must be offset by any prior award of attorneys' 8 | fees granted under the EAJA. 28 U.S.C. § 2412(d); *Gisbrecht*, 535 U.S. 796. As Plaintiff was 9 || previously awarded \$7,500.00 in fees pursuant to the EAJA, Counsel shall refund this amount to 10 | Plaintiff. 11 Accordingly, it is ORDERED: 12 1. Plaintiff's Counsel's motion for an award of attorney's fees under § 406(b) (Doc.

No. 13 37) is GRANTED. 14 2. Plaintiff's Counsel is awarded \$33,483.43 in attorney fees pursuant to 42 U.S.C. § 15 406(b). 16 3. Counsel shall refund to Plaintiff \$7,500.00 of the § 406(b) fees awarded as an offset 17 for the EAJA fees previously awarded pursuant to 28 U.S.C. § 2412(d). 18 4.

The Clerk of the Court is respectfully directed to serve a copy of this Order on 19 Plaintiff Wendy Gay Morgan, 26451 4% Ellis Street, Madera, California, 93638. 20 21 Dated: _ December 9, 2025 law ZA. hareh Back 22 HELENA M. BARCH-KUCHTA 33 UNITED STATES MAGISTRATE JUDGE 24 25 26 27 28

