

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Amelia Kopf Shah, o.b.o. Rodney Kopf, Deceased v. Frank Bisignano,
Commissioner of Social Security

Kopf Shah · No. No. 23-1124-JWL · Decided January 13, 2026

SUMMARY

The United States District Court for the District of Kansas approved a \$4,959 attorney-fee award under 42 U.S.C. § 406(b) in a Social Security disability case remanded for further proceedings. The court found the fee reasonable, subject to the statutory limitation, and ordered counsel to refund the previously awarded \$900.91 Equal Access to Justice Act fee to the plaintiff.

CASE DETAILS

COURT	United States District Court for the District of Kansas
WRITING FOR THE COURT	John W. Lungstrum
JURISDICTION	United States District Court for the District of Kansas
DECIDED	January 13, 2026
DOCKET	No. 23-1124-JWL
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for approval of attorney fees under section 406(b) of the Social Security Act after obtaining a favorable remand and fully favorable administrative decision.
STANDARD OF REVIEW	The court independently reviews a requested § 406(b) fee for reasonableness, beginning with the contingent-fee agreement and considering the character of the representation, results achieved, attorney-caused delay, and whether the benefits are large in comparison to the time spent. Appellate review of a district court's § 406(b) fee award is for abuse of discretion.
PRECEDENTIAL VALUE	Unpublished district court memorandum and order; nonprecedential
PARTIES	Amelia Kopf Shah, o.b.o. Rodney Kopf, Deceased v. Frank Bisignano, Commissioner of Social Security

TOPICS

attorney fees

judicial review of agency action

administrative law

remedies

civil procedure

PRACTICE AREAS

Social Security

administrative law

attorney fees

civil procedure

QUESTIONS PRESENTED

1. Whether the requested \$4,959.00 attorney fee was reasonable and permissible under 42 U.S.C. § 406(b).
2. Whether counsel was required to refund the previously awarded Equal Access to Justice Act fee to Plaintiff.

HOLDINGS

1. The requested \$4,959.00 fee was reasonable under 42 U.S.C. § 406(b) and did not exceed the statutory 25 percent limit on past-due benefits.
2. Counsel must refund the \$900.91 EAJA fee award to Plaintiff because the EAJA award was the smaller fee.

KEY QUOTATIONS

“The court has discretion to approve such a fee.” (2)

“However, the court does have an affirmative duty to allow only so much of the fee as is reasonable.” (2)

“IT IS THEREFORE ORDERED that pursuant to 42 U.S.C. § 406(b) the court approves an attorney fee of \$4,959.00” (6)

“IT IS FURTHER ORDERED that counsel shall refund the EAJA fee award of \$900.91 to Plaintiff.” (6)

FACTUAL BACKGROUND

Plaintiff’s counsel represented her in the federal Social Security action and obtained a remand after the Commissioner confessed error. On remand, the Commissioner issued a fully favorable decision, and the Social Security Administration withheld \$12,159.00 from the claimant’s past-due benefits. Counsel requested \$4,959.00 under a contingent-fee agreement providing for 25 percent of past-due benefits and documented 3.90 hours of work before the district court.

PROCEDURAL HISTORY

Plaintiff filed an action seeking judicial review of the Commissioner’s decision. Before Plaintiff filed her Social Security brief, the Commissioner confessed error and moved for an unopposed remand; the court granted the motion and entered judgment remanding the case for further proceedings. The court later awarded Plaintiff \$900.91 in Equal Access to Justice Act fees. On remand, the Commissioner issued a fully favorable decision, and Plaintiff moved for approval of a \$4,959.00 contingent fee under 42 U.S.C. § 406(b).

DISPOSITION

other

CASES CITED

- McGraw v. Barnhart, 450 F.3d 493, 497-98 (10th Cir. 2006)
- Gisbrecht v. Barnhart, 535 U.S. 789, 807-08 (2002)
- Gordon v. Astrue, 361 F. App'x 933, 935-36 (10th Cir. 2010)
- McGuire v. Sullivan, 873 F.2d 974, 983 (7th Cir. 1989)
- United States v. McComb, 519 F.3d 1049, 1054 (10th Cir. 2007)
- Madrigal v. Kijakazi, Civ. A. No. 19-2429-JWL, 2021 WL 4860555 (D. Kan. Oct. 19, 2021)
- Gardipee v. Saul, Civ. A. No. 20-1001-JWL, 2021 WL 826206, at *3 (D. Kan. Mar. 4, 2021)
- Morris v. Kijakazi, Civ. A. No. 19-1133-JWL, 2021 WL 5769365 (D. Kan. Dec. 6, 2021)
- Rogers v. Saul, Civ. A. No. 19-1134-JWL, 2022 WL 17718655 (D. Kan. Dec. 15, 2022)
- Schlein v. Kijakazi, Civ. A. No. 21-1180-JWL, 2023 WL 5952025 (D. Kan. Sept. 13, 2023)
- Firment v. O'Malley, Civ. A. No. 22-1220-JWL, 2023 WL 8934765 (D. Kan. Dec. 27, 2023)
- Walls v. O'Malley, Civ. A. No. 21-1011-JWL, 2024 WL 52609 (D. Kan. Jan. 3, 2024)
- Biestek v. Berryhill, 139 S. Ct. 1148, 1154, 1157 (2019)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS AMELIA KOPF SHAH,) o.b.o. RODNEY KOPF, Deceased)) Plaintiff,)) CIVIL ACTION v.)) No. 23-1124-JWL) FRANK BISIGNANO,¹) Commissioner of Social Security,)) Defendant.)
_____) MEMORANDUM AND ORDER This matter is before the court on a motion for approval of an attorney fee (Doc.

13, & Attach. 1) (Pl. Mot.) pursuant to the Social Security Act, 42 U.S.C. ' 406(b). Plaintiff=s motion is GRANTED, approving a fee in the amount of \$4,959.00 pursuant to the Social Security Act. I. Background Plaintiff filed a Complaint in this court on June 22, 2023, seeking judicial review of a decision of the Commissioner of the Social Security Administration.

(Doc 1). 1 On May 7, 2025, Mr. Bisignano was sworn in as Commissioner of Social Security. In accordance with Rule 25(d)(1) of the Federal Rules of Civil Procedure, Mr. Bisignano is substituted for Acting Commissioner Kilolo Kijakazi as the defendant. Pursuant to the last sentence of 42 U.S.C. § 405(g), no further action is necessary.

After the Commissioner filed the administrative record in this case and before Plaintiff filed her Social Security Brief, the Commissioner confessed error and filed an unopposed motion to remand. (Doc. 6). The court granted the Commissioner's motion and entered judgment remanding the case for further proceedings the same day. (Docs. 7, 8).

The court granted the parties' joint motion for attorney fees pursuant to the Equal Access to Justice Act on October 24, 2023. (Doc. 12). On remand, the Commissioner issued a fully favorable

decision on May 28, 2024, and an “Important Information” letter on October 25, 2025. (Pl. Mot., Attachs. 3, 4).

The SSA withheld \$12,159.00 from Mr. Kopf’s past due benefits. Id. Attach. 4, p.3. Plaintiff now seeks award of attorney fees of \$4,959.00 pursuant to ‘ 206(b) of the Social Security Act. 42 U.S.C. § 406(b). II. Legal Standard The Social Security Act provides for the payment of an attorney fee not to exceed 25% of the claimant’s past due benefits. 42 U.S.C. ‘ 406(b).

The court has discretion to approve such a fee. *McGraw v. Barnhart*, 450 F.3d 493, 497-98 (10th Cir. 2006). However, the court has an affirmative duty to allow only so much of the fee as is reasonable. *Gisbrecht v. Barnhart*, 535 U.S. 789, 807-08 (2002); *McGraw*, 450 F.3d at 498; 42 U.S.C. ‘ 406(b)(1)(A).

(1)(A) Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment, and the Commissioner of Social Security may,... certify the amount of such 2 fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits.

42 U.S.C. ‘ 406(b)(1)(A) (emphases added). The Supreme Court, in *Gisbrecht* determined that a contingency fee agreement within the twenty-five percent ceiling is allowed by ‘ 406(b) of the Act, and that courts may not use the “lodestar” method to establish a reasonable fee in such a case. Where there is a contingency-fee agreement between Plaintiff and her attorney, the court is to look first to the agreement and then test the agreement for reasonableness.

Gisbrecht, 535 U.S. at 807-08. In determining reasonableness, the Court suggested that courts should consider such factors as the character of representation, the results achieved, whether the attorney is responsible for any delay, and whether the benefits are large in comparison to the amount of time counsel spent on the case. Id. 535 U.S. at 808.

The Court noted that the comparison of benefits to time spent might be aided by submission of the plaintiff=s attorney=s billing record and normal hourly billing rate. Id. The Tenth Circuit has explained the procedure used in applying *Gisbrecht*. *Gordon v. Astrue*, 361 F. App’x 933, 935–36 (10th Cir. 2010). It noted that the court is to look first to the fee agreement between the plaintiff and her counsel, and “the statute does require courts to serve ‘as an independent check’ by ‘review[ing] for reasonableness fees yielded by those agreements.’” Id. at 935 (quoting *Gisbrecht*, 535 U.S. at 807-09).

The court noted that the Court provided examples of proper reasons for reducing 406(b) fee requests: 3 (1) when “the character of the representation and the results the representative achieved” were substandard; (2) when “the attorney is responsible for delay” that causes disability

benefits to accrue “during the pendency of the case in court”; and (3) when “the benefits are large in comparison to the amount of time counsel spent on the case.” *Id.* (quoting *Gisbrecht*, 535 U.S. at 808).

The court acknowledged six factors recognized by the Seventh Circuit before *Gisbrecht* was decided as potentially useful when making a 406(b) reasonableness determination—although it merely “assum[ed], without granting, that the district court had some obligation to” consider those factors. *Id.* (citing *McGuire v. Sullivan*, 873 F.2d 974, 983 (7th Cir. 1989) (“time and labor required; skill required; contingency of fee; amount involved and result attained; experience, reputation, and ability of attorney; and awards in similar cases.”)).

The Tenth Circuit reviews “a district court’s award of attorney’s fees under § 406(b) for an abuse of discretion, see *McGraw* 450 F.3d 493 at 505, and will reverse only if the district court’s decision is ‘based on a clearly erroneous finding of fact or an erroneous conclusion of law or manifests a clear error of judgment,’” *Id.*, *Gordon*, 361 F. App’x at 935 (quoting *United States v. McComb*, 519 F.3d 1049, 1054 (10th Cir.

2007)). This court has approved 406(b) contingent attorney fees at an hourly rate of \$736.07 resulting in an equivalent hourly rate for non-contingent work of almost \$263.00; *Madrigal v. Kijakazi*, Civ. A. No. 19-2429-JWL, 2021 WL 4860555 (D. Kan. October 19, 2021); see also, *Gardipee v. Saul*, Civ. A. No. 20-1001-JWL, 2021 WL 826206, *3 (D. Kan. Mar. 4, 2021) (an hourly rate of \$1,001.90 resulting in an equivalent hourly rate for non-contingent work of \$357.82); *Morris v. Kijakazi*, Civ.

A. No. 19- 4 1133-JWL, 2021 WL 5769365 (D. Kan. Dec. 6, 2021) (hourly rate of \$410.57); *Rogers v. Saul*, Civ. A. No. 19-1134-JWL, 2022 WL 17718655 (D. Kan. Dec. 15, 2022) (hourly rate of \$2,265.39 and an equivalent hourly rate \$809.07); *Schlein v. Kijakazi*, Civ. A. No. 21-1180-JWL, 2023 WL 5952025 (D. Kan. Sept. 13, 2023) (at an hourly rate of \$703.80 resulting in an equivalent hourly rate of \$251.36); *Firment v. O’Malley*, Civ.

A. No. 22- 1220-JWL, 2023 WL 8934765 (D. Kan. Dec. 27, 2023 (hourly rate of \$1,157.81 and equivalent hourly rate of \$413.50); and, *Walls v. O’Malley*, Civ. A. No. 21-1011-JWL, 2024 WL 52609 (D. Kan. Jan. 3, 2024) (hourly rate of \$1,407.34 and equivalent hourly rate of \$502.62). III. Discussion Here, Plaintiff=s attorney requests a fee award of less than half (40.78%) the full 25 percent of Plaintiff’s past due benefits, or \$4,959.00.

She included a copy of the contingent fee agreement signed by Plaintiff, in which she agreed to a fee of 25 percent of past due benefits. (Pl. Mot., Attach. 5). Counsel submitted a listing of the hours expended in prosecuting this case before this court showing 3.90 hours expended. *Id.*, Attach. 6. Counsel argues that the skill, competence, expertise, and experience of her and her firm produced an excellent result in this case and support awarding this fee.

Id., Attach. 1, p.10-11. The Commissioner submitted a response to Plaintiff's Motion asserting that he "neither supports nor opposes counsel's request for attorney's fees in the amount of \$4,959.00." (Doc. 15, p.1). 5 The court has considered both the Gisbecht and the McGuire factors and the arguments of counsel and makes the following findings. Plaintiff has met her burden to prove that award of \$4,959.00 is reasonable in the circumstances present here.

The court notes that counsel achieved a good result for Plaintiff in this case especially considering the Commissioner chose to request remand before Plaintiff filed her brief. The court recognizes that the contingent nature of the fee justifies a fee award in Social Security cases when the claimant prevails which is higher than normal hourly rates charged by attorneys in other matters in order to encourage practitioners to take such cases and to provide for those cases taken which are not successfully concluded.

Plaintiff points out that the fee requested would result in an hourly fee rate of \$1,271.54 in a non-contingent case but when considered with the risk of loss in Social Security cases it would result in an equivalent rate in noncontingent cases of \$451.12. (Pl. Br, attach. 1, p.11). This is well within the range of reasonable fees accepted by this court as noted above.

This is particularly true due to the deferential standard applicable in Social Security cases, *Biestek v. Berryhill*, 139 S. Ct. 1148, at 1154, 1157 (2019), and this court's strict adherence to that standard. Both the Commissioner and Plaintiff's counsel remind the court that the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, fee in this case was \$900.91 and must be refunded to Plaintiff as the smaller fee.

The court finds that the fee requested is less than 25% of past due benefits and is a reasonable fee in the circumstances of this case. 6 IT IS THEREFORE ORDERED that pursuant to 42 U.S.C. ' 406(b) the court approves an attorney fee of \$4,959.00 which the Commissioner shall provide to Plaintiff=s counsel subject to any remaining past due benefits withheld. IT IS FURTHER ORDERED that counsel shall refund the EAJA fee award of \$900.91 to Plaintiff.

Dated January 12, 2026, at Kansas City, Kansas. s:/ John W. Lungstrum John W. Lungstrum
United States District Judge 7