

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
NEW YORK

Bernice Jackson v. Frank Bisignano, Commissioner of Social Security

Jackson v. Bisignano · No. 6:23-cv-00806 (MJK) · Decided December 15, 2025

SUMMARY

The United States District Court for the Northern District of New York grants in part Bernice Jackson’s motion for attorney’s fees under 42 U.S.C. § 406(b)(1). The court awards \$32,065.75 from Jackson’s past-due Social Security benefits and directs counsel to refund the previously awarded \$6,115.56 EAJA fee to Jackson rather than offsetting it against the § 406(b) award.

CASE DETAILS

COURT	United States District Court for the Northern District of New York
WRITING FOR THE COURT	U.S. Magistrate Judge
JURISDICTION	United States District Court for the Northern District of New York
DECIDED	December 15, 2025
DOCKET	6:23-cv-00806 (MJK)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for an award of attorney's fees under 42 U.S.C. § 406(b)(1) after obtaining a remand and a fully favorable disability determination. The Commissioner responded, and plaintiff supplemented the motion to establish compliance with the court's fee-notification procedure.
STANDARD OF REVIEW	The court independently determined whether the requested contingent fee was reasonable under 42 U.S.C. § 406(b)(1) and the factors identified in Fields v. Kijakazi.
PRECEDENTIAL VALUE	unpublished
PARTIES	Bernice Jackson v. Frank Bisignano, Commissioner of Social Security

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the requested attorney's fee of \$32,065.75 under 42 U.S.C. § 406(b)(1) was reasonable.
2. Whether the previously awarded EAJA fee should be netted against the § 406(b) fee award or refunded directly to Jackson.

HOLDINGS

1. The requested fee of \$32,065.75 was reasonable and could be awarded from Jackson's past-due benefits because it complied with the 25% statutory and contractual limit, was supported by a fully favorable result, involved no fraud, overreaching, or undue delay, and did not constitute a windfall.
2. The EAJA fee should not be netted from the § 406(b) award; instead, counsel must refund the previously received EAJA fee of \$6,115.56 to Jackson.

KEY QUOTATIONS

"Fee awards may be made under both [EAJA and 406(b)], but the claimant's attorney must 'refund to the claimant the amount of the smaller fee.'" (535 U.S. at 796)

FACTUAL BACKGROUND

Jackson entered into a contingent-fee agreement providing for a fee of no more than 25% of past-due benefits arising from the firm's federal-court work. Counsel reported 24.59 hours of work, and Jackson received a fully favorable disability determination on remand, with \$128,263 in past-due benefits and \$32,065.75 withheld for attorney's fees. Counsel had previously received \$6,115.56 under the EAJA.

PROCEDURAL HISTORY

Jackson filed a Social Security appeal in the District Court. The parties stipulated to remand, which the court approved on April 23, 2024, and judgment was entered in Jackson's favor. On remand, the Commissioner found Jackson disabled and awarded \$128,263 in past-due benefits, withholding \$32,065.75 for attorney's fees. The court approved an EAJA fee of \$6,115.56 and, in this decision, awarded the requested § 406(b) fee while directing counsel to refund the EAJA amount to Jackson rather than netting it from the § 406(b) award.

DISPOSITION

other

CASES CITED

- *Gisbrecht v. Barnhart*, 535 U.S. 789, 796, 798 n.6 (2002)
- *Fields v. Kijakazi*, 24 F.4th 845, 853-56 (2d Cir. 2022)
- *Franklin P. v. Commissioner of Social Security*, 6:21-CV-162, 2022 WL 3371148 (N.D.N.Y. Aug. 16, 2022)
- *Eric K. v. Berryhill*, No. 5:15-cv-00845 (BKS), 2019 WL 1025791, at *3 (N.D.N.Y. Mar. 4, 2019)

- Kazanjian v. Astrue, No. 09-CV-3678 (BMC), 2011 WL 2847439, at *2 (E.D.N.Y. July 15, 2011)
- Duane P. v. Bisignano, 2025 WL 1707224 (S.D.N.Y. 2025)
- Flynn v. Saul, 2023 WL 2815120 (S.D.N.Y. 2023)
- Johnson v. Kijakazi, No. 20-CV-2630, 2022 WL 17718336, at *6 (S.D.N.Y. Dec. 15, 2022)

OPINION

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK Bernice Jackson, Plaintiff 6:23-cv-00806 (MJK) v. Frank Bisignano, Commissioner of Social Security, Defendant. George C. Piemonte, Esq., Attorney for Plaintiff Fergus Kaiser, Esq., Special Assistant United States Attorney for Defendant DECISION AND ORDER Jackson moves the Court¹ for an award of attorney's fees pursuant to 42 U.S.C. § 406(b)(1).

(Dkt. 32). The Commissioner filed a response. (Dkt. 33). By supplemental affirmation dated December 10, 2025, Jackson's counsel attests that Jackson has been notified of the fee motion in accordance with section (F)(2) of G.O. 18. (Dkt. 35).

The motion seeks an award of \$32,065.75, less the \$6,115.56 previously paid ¹ The parties consented to the jurisdiction of the Magistrate Judge. (G.O. 18 and Dkt. 5). to Jackson's attorney under the Equal Access to Justice Act ("EAJA"), for a net total of \$25,950.19.

The motion is granted in part and denied in part. The Court awards the sum of \$32,065.75 as reasonable attorney's fees but denies the request to "net" the previously paid EAJA fee. Counsel is directed to remit to Jackson the EAJA fee previously received.

I. DISCUSSION Jackson entered into a contingency fee agreement with Martin Jones & Piemonte, Attorneys at Law on April 5, 2023 pursuant to which Jackson agreed to pay in attorneys' fee no more than 25% of all back benefits paid to her arising from the firm's work in court. (Dkt. 32-3).

The fee contract acknowledges the attorney's obligation to account for the EAJA fee and provides that the EAJA fee will be netted from the total award. Attorney Piemonte attests that a total of 24.59 hours of attorney services were devoted to Jackson's case in this Court.

The services provided included evaluation the case for appeal to the District Court; assessing the need to develop the medical record; advising Jackson regarding an appeal to the District Court; drafting the Complaint; researching and drafting a brief in the District Court; reviewing the Government's motion to remand; reviewing the final order and judgment and preparing an application for EAJA fees.

(Dkt. 32-1, at 4). A supplemental administrative record was filed on January 31, 2024. (Dkt. 24). Jackson's brief was filed on March 18, 2024. (Dkt. 25). A stipulation to remand (Dkt. 27) was approved by this Court on April 23, 2024 and judgment was entered in Jackson's favor (Dkts. 28,

29). A stipulation pursuant to the EAJA was filed on July 2, 2024 and approved by the Court on July 3, 2024 (Dkts.

30, 31). On remand, the Commissioner found Jackson disabled and she received a Notice of Award dated October 25, 2025, indicating \$128,263 as the total amount of past-due benefits being awarded, and the withholding of \$32,065.75 for attorney's fees. (Dkt. 32-2, Exhibit A to motion for fees).

The Court must determine whether the attorney's fees award requested is reasonable. See *Gisbrecht v. Barnhart*, 535 U.S. 789, 798 n.6 (2002). To make this finding, the court considers the factors set forth in *Fields v. Kijakazi*, 24 F.4th 845,853-56 (2d Cir. 2022).

Here, there is no evidence that there was fraud or overreaching in the making of the contingency fee contract, and the contingency fee of 25% is compliant with 42 U.S.C. §406(b)(1)(A). The fully favorable outcome achieved by the law firm speaks for itself.

As the record shows, the firm was not responsible for any undue delay in the prosecution of the appeal as established by the timeline described above. Attorney Piemonte has thirty years of experience in representing Social Security disability claimants and holds a professional certification in the subject matter, along with holding various bar and other association leadership positions focused on Social Security and disability related law.

Since 1995, Social Security law related matters represents 90% of Attorney Piemonte's practice. (Dkt. 32-6). Mr. Piemonte's colleague, Ellen Moyle, attests to approximately 12 years of experience focused on Social Security disability matters. (Dkt. 32-7).

The hours spent in representing Jackson reflect the efficiency that such a focused subject matter practice can bring to handling these types of cases. There is no evidence that Jackson is unsatisfied with the efforts of the law firm.

The nature of these cases makes a favorable result uncertain, yet the effort to achieve the result is a constant. The Court also finds that the fee award does not constitute a windfall as the effective hourly rate of \$1,055 (25,950/24.59) is reasonable given Attorney Piemonte and Moyle's experience, and the risk associated with contingency fee practice (and the desirability of having attorneys willing to handle these cases on a contingency fee basis).

See *Franklin P. v. Comm'r of Soc. Sec.*, 6:21-CV-162, 2022 WL 3371148 (N.D.N.Y. Aug. 16, 2022) (Hurd, J.) (\$1,025.94 de facto hourly rate); see also *Eric K. v. Berryhill*, No. 5:15-cv-00845 (BKS), 2019 WL 1025791, *3 (N.D.N.Y. Mar. 4, 2019) (Sannes, J.) (\$1,500 de facto hourly rate); *Kazanjian v. Astrue*, No. 09-CV-3678 (BMC), 2011 WL 2847439, *2 (E.D.N.Y. July 15, 2011) (\$2,100 de facto hourly rate).

Finally, the Court denies the request for netting the EAJA fee from the final fee award, consistent with *Gisbrecht*, where the Supreme Court noted that Congress recognized that “[f]ee awards may be made under both [EAJA and 406(b)], but the claimant’s attorney must ‘refund to the claimant the amount of the smaller fee.’” 535 U.S. at 796; see also *Duane P. v. Bisignano*, 2025 WL 1707224 (S.D.N.Y.

2025)(“netting” is disfavored, noting that an award under 406(b) is paid by the plaintiff and fees paid under EAJA are paid by the government); *Flynn v. Saul*, 2023 WL 2815120 (S.D.N.Y. 2023); *Johnson v. Kijakazi*, No. 20-CV- 2630, *6, 2022 WL 17718336, at *6 (S.D.N.Y. Dec. 15, 2022) (noting that netting “ignores the express statutory directive that, ‘where the claimant’s attorney receives fees for the same work under both [§ 406(b)] and [EAJA], the claimant’s attorney refunds to the claimant the amount of the smaller fee.’”) (quoting Pub.

L. No. 99-80, § 3, 99 Stat. 186). For the reasons set forth above, Jackson’s motion is granted to the extent that her attorney, Martin, Jones & Piemonte, is awarded fees under 42 U.S.C. § 406(b)(1) in the amount of \$32,065.75, to be paid out of Jackson’s past due benefits, from the monies retained by the Commissioner for that purpose. Martin, Jones & Piemonte is directed, upon receipt of the §406(b) award, to refund Jackson the EAJA fees previously awarded, in the amount of \$6,115.56.

WHEREFORE, it is hereby ORDERED, that Martin Jones & Piemonte’s motion is granted and the firm is awarded attorney’s fees in the amount of \$32,065.75, and it is further ORDERED, that Martin Jones & Piemonte shall refund to Jackson any fees previously received under the EAJA, to wit, \$6,115.56. Dated: December 15, 2025. U.S. Magistrate Judge