

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

WESLEY MILLS,

Plaintiff,

v.

Case No.: 8:14-cv-699-T-AAS

**NANCY W. BERRYHILL,¹
Commissioner of Social Security,**

Defendant.

ORDER

This cause comes before the Court upon the request of Plaintiff's Attorneys' Motion for Award of Attorney Fees Under 42 U.S.C. § 406(b) (Doc. 42). Following the entry of an Order affirming the Commissioner's decision on April 28, 2015 (Doc. 27), Plaintiff appealed to United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit reversed and remanded this case for further proceedings. *See Mills v. Comm'r of Soc. Sec.*, 659 F. App'x. 541 (11th Cir. 2016). Upon remand, the Commissioner issued a favorable decision for Plaintiff resulting in an award of disability benefits (Doc. 42-2). As a result of the favorable decision, Plaintiff's counsel now seeks payment of fees in the amount of \$22,992.50 pursuant to 42 U.S.C. § 406(b), with the amount of fees paid pursuant to the Equal Access to Justice Act (EAJA) to be reimbursed to Plaintiff. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (finding that fee awards may be made under both 42 U.S.C. § 406(b) and the EAJA but that the claimant's attorney must refund to

¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to Fed. R. Civ. P. 25(d), Nancy A. Berryhill should be substituted for Acting Commissioner Carolyn W. Colvin as the defendant in this suit. No further action needs to be taken to continue this suit by reason of the last sentence of the Social Security Act, 42 U.S.C. § 405(g).

the claimant the amount of the smaller fee).

Under 42 U.S.C. § 406(b), when a court renders a judgment favorable to a Social Security claimant who was represented before the court by counsel, the court may allow a reasonable fee for such representation, not to exceed twenty-five percent of the total past-due benefits to which the claimant is entitled. 42 U.S.C. § 406(b)(1)(A). Here, the Social Security Administration withheld a total of \$28,992.50 from Plaintiff's past-due benefits for possible payment of attorney's fees in federal court (Doc. 42-2). Upon review of the fee agreement (Doc. 42-1) and the itemization of services rendered by counsel (Doc. 40), the Court determines that an award of fees in the amount of \$22,992.50 is reasonable and appropriate. Since Plaintiff already received an award of fees in the amount of \$15,026.89 pursuant to the EAJA (Doc. 41), Plaintiff's counsel shall reimburse Plaintiff for that amount.

Accordingly, after consideration, it is **ORDERED**:

1. Plaintiff's Attorneys' Motion for Award of Attorney Fees Under 42 U.S.C. § 406(b) (Doc. 42) is **GRANTED**.

2. Plaintiff's counsel is awarded fees in the amount of \$22,992.50 pursuant to 42 U.S.C. § 406(b).

3. Plaintiff's counsel is directed to reimburse to Plaintiff the \$15,026.89 in fees paid pursuant to the EAJA.

DONE AND ORDERED in Tampa, Florida on this 5th day of July, 2017.



AMANDA ARNOLD SANSONE
United States Magistrate Judge