

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GENE MACIBORKA,

Plaintiff,

v.

Case No. 8:16-cv-2432-T-AEP

ANDREW M. SAUL,
Commissioner of Social Security,

Defendant.

_____ /

ORDER

This cause comes before the Court upon the Plaintiff's Attorney's Motion for an Award of Attorney Fees Under 42 U.S.C. § 406(b) (Doc. 25). On September 27, 2017, this Court entered an Order reversing and remanding the decision of the Commissioner under sentence four of 42 U.S.C. § 405(g) (Doc. 21). Upon remand, the Commissioner issued a favorable decision for Plaintiff resulting in an award of disability benefits (Doc. 25, Ex. 1). As a result of the favorable decision, Plaintiff's counsel now seeks payment of fees in the amount of \$15,181.75 pursuant to 42 U.S.C. § 406(b).

The Court previously awarded Plaintiff's fees in the amount of \$5,049.75 pursuant to the EAJA (Doc. 24). Notwithstanding, Plaintiff's counsel seeks payment of fees in the amount of \$15,181.75 pursuant to 42 U.S.C. § 406(b). Plaintiff's attorney is aware that in the event this motion is granted, he is under an obligation to refund to the Plaintiff the EAJA fees received, up to the amount of the award (Doc. 25). The Commissioner does not oppose the requested relief¹.

¹ Upon telephonic notice, the Defendant clarified that the Plaintiff's Motion is unopposed.

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). A plaintiff's counsel may recover attorneys' fees under both 42 U.S.C. § 406(b) and EAJA. *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002). The plaintiff's attorney must, however, refund to the plaintiff the amount of the smaller fee. *Id.* Here, the Social Security Administration withheld a total of \$15,181.75 from Plaintiff's past-due benefits for possible payment of attorney's fees in federal court (Doc. 25). Upon review of the fee agreement (Doc. 25-2) and the itemization of services rendered by counsel (Doc. 25-3), the Court determines that an award of fees in the amount of \$15,181.75 is reasonable and appropriate. Accordingly, it is hereby

ORDERED:

1. Plaintiff's request for an award of attorney's fees under 42 U.S.C. § 406(b) (Doc. 25) is GRANTED.
2. Plaintiff's counsel is awarded fees in the amount of \$15,181.75 pursuant to 42 U.S.C. § 406(b).
3. Plaintiff's counsel is directed to reimburse to Plaintiff the \$5,049.75 in fees paid pursuant to the EAJA.

DONE AND ORDERED in Tampa, Florida, on this 12th day of September, 2019.



ANTHONY E. PORCELLI
United States Magistrate Judge

cc: Counsel of Record