

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

HENRY DUPREE, JR.,

Plaintiff,

v.

Case No. 8:20-cv-2496-AAS

**MARTIN O'MALLEY,
Commissioner of the Social
Security Administration,¹**

Defendant.

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ORDER

Plaintiff Henry Dupree, Jr.'s counsel moves for an award of **\$25,116.00** in attorney's fees under 42 U.S.C. § 406(b). (Doc. 21). The Commissioner does not oppose the fee amount requested. (Doc. 22, p. 2).

Mr. Dupree applied for a period of disability and Disability Insurance Benefits on July 9, 2018, which was denied initially and on reconsideration. (Tr. 49–61, 64–78). Mr. Dupree then requested a hearing before an Administrative Law Judge (ALJ), who found Mr. Dupree not disabled. (Tr. 14–29, 147). The Appeals Council denied Mr. Dupree's request for review of the ALJ's decision. (Tr. 1–6). Mr. Dupree then filed a complaint in this court. (Doc.

¹ On December 20, 2023, Martin O'Malley became the Commissioner of the Social Security Administration.

1). After consideration of the issues raised in the parties' joint memorandum of law, the court remanded the decision of the Commissioner. (Docs. 15, 17). The Commissioner found Mr. Dupree disabled on remand.

Under Section 406(b), when a court enters judgment favorable to a Social Security claimant represented by counsel, the court may award attorney's fees not to exceed twenty-five percent of the claimant's total past-due benefits. 42 U.S.C. § 406(b)(1)(A). Based on the fee agreement that Mr. Dupree agreed his counsel could request 25% of the past-due benefits for attorney's fees, an award of attorney's fees of \$25,116.00 is appropriate. (*See* Doc. 21-2).

The court awarded Mr. Dupree's counsel \$3,055.06 in attorney's fees under the Equal Access to Justice Act (EAJA). (Doc. 20). When an attorney receives attorney's fees under the EAJA and Section 406(b), the attorney must refund the smaller fee. *Black v. Culbertson*, 470 F. App'x 737, 739 (11th Cir. 2012). Mr. Dupree's counsel must refund any attorney's fees awarded under the EAJA.

Thus, the Motion for Attorney's Fees Under 42 U.S.C. § 406(b) (Doc. 21) is **GRANTED**. Mr. Dupree's counsel is awarded **\$25,116.00** in attorney's fees and must refund to Mr. Dupree the attorney's fees received under the EAJA.

ENTERED in Tampa, Florida on June 3, 2024.

Amanda Arnold Sansone

AMANDA ARNOLD SANSONE
United States Magistrate Judge