

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALBERTINA S. ROBINSON,

Plaintiff,

Civil Case No. 16-10193
Honorable Linda V. Parker

v.

NANCY A. BERRYHILL,
Acting Commissioner of
Social Security,

Defendant.

_____/

**OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR
ATTORNEY FEES PURSUANT TO § 406(b)
OF THE SOCIAL SECURITY ACT**

Plaintiff commenced this action to appeal a final administrative decision denying her claim for benefits under the Social Security Act. The parties thereafter stipulated to a remand to the Social Security Administration for further action pursuant to sentence four of 42 U.S.C. § 405(g). (ECF No. 15.) The parties also stipulated to an award of attorney's fees in the amount of \$4,275.00 under the Equal Access to Justice Act, 28 U.S.C. § 2412. (ECF No. 17.) On remand, Plaintiff was found disabled and awarded past due benefits. (ECF No. 18, Exs. A, B.) The Social Security Administration notified Plaintiff that it would withhold \$20,854.75 in benefits, representing an award of attorney's fees equal to 25% of the total amount of past due benefits to which Plaintiff is entitled. (*Id.* Ex. B.)

The matter is presently before the Court on Plaintiff's motion for authorization of attorney's fees pursuant to 42 U.S.C. § 406(b) in the amount of \$20,854.75, on the condition that Plaintiff's attorney return the fees awarded under the EAJA to Plaintiff. Defendant does not oppose Plaintiff's motion.

Section 406(b) authorizes a court to award a social security claimant the fees for his or her representative in an amount not to exceed twenty-five percent of the total of the past-due benefits to which the claimant is entitled. 42 U.S.C. § 406(b). While fee awards are possible under both the EAJA and § 406(b), Congress provided that "the claimant's attorney must 'refund to the claimant the amount of the smaller fee.'" *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (quoting Pub. L. 99-80, § 3, 99 Stat. 186).

Accordingly,

IT IS ORDERED that Plaintiff's Motion for Attorney Fees Pursuant to § 406(b) of the Social Security Act is **GRANTED** and Plaintiff's counsel is awarded fees in the amount of \$20,854.75;

IT IS FURTHER ORDERED that Plaintiff's counsel shall refund to Plaintiff the \$4,275.00 previously awarded under the Equal Access to Justice Act.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: July 12, 2019