
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

<p>Griffin Bonacci,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>Andrew Saul, Commissioner of Social Security,</p> <p style="text-align: center;">Defendant.</p>	<p>MEMORANDUM DECISION AND ORDER GRANTING PLAINTIFF'S COUNSEL'S REQUEST FOR 42 U.S.C. § 406(b) FEES</p> <p>Case No. 2:17-cv-348 DBP</p> <p>District Judge</p> <p>Magistrate Judge Dustin B. Pead</p>
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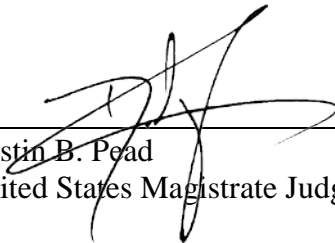
Plaintiff requests an award of attorney fees under the Social Security Act, [42 U.S.C. § 406\(b\)](#) ([ECF 32](#), [ECF 33](#).) Fees under this statute are awarded from a claimant's past-due benefits. They are capped at 25 percent of the total of the past-due benefits, and must be reasonable. *See* [42 U.S.C. § 406\(b\)\(1\)\(A\)](#); [20 C.F.R. § 404.1730](#). Previously, the court granted Plaintiff \$5,500 in attorney fees under the Equal Access to Justice Act (EAJA), [28 U.S.C. § 2412](#). ([ECF 31](#).) Unlike fees awarded under the EAJA, fees under [42 U.S.C. § 406\(b\)](#) are paid from the claimant's benefits, rather than from agency funds and are based on a contract between the claimant and the claimant's attorney. The Commissioner is not a party to a [§ 406\(b\)](#) fee award and has taken no position on the request. ([ECF 34](#).)

As acknowledged by Plaintiff's counsel, because Plaintiff's counsel also received an award of \$5,500 in attorney fees under the EAJA, Plaintiff's counsel must refund to Plaintiff the lesser of the two fees that he receives. ([ECF 32](#) p 2, 5.) *See Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986). Plaintiff's counsel seeks \$7,912.50 in fees, which is derived from the total request of \$13,412.50 minus the EAJA award of \$5,500. The court has reviewed Plaintiff's [406\(b\)](#) fee request and finds it is reasonable and supported by the evidence in the record.

Therefore, it is hereby ordered that fees under [42 U.S.C. § 406\(b\)](#) are granted in the amount of \$7,912.50 from the claimant's past-due benefits.

IT IS SO ORDERED.

DATED this 22 October 2019.



Dustin B. Pead
United States Magistrate Judge