

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

**ROBERTO C. SANCHEZ,**

**Plaintiff,**

**v.**

**Case No: 6:16-cv-671-Orl-28DCI**

**COMMISSIONER OF SOCIAL  
SECURITY,**

**Defendant.**

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**REPORT AND RECOMMENDATION**

This cause comes before the Court for consideration without oral argument on the following motion:

**MOTION: PLAINTIFF’S UNOPPOSED MOTION FOR ATTORNEY’S  
FEES UNDER 42 U.S.C. § 406(b) (Doc. 31)**

**FILED: April 25, 2019**

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**THEREON it is RECOMMENDED that the motion be GRANTED.**

Plaintiff’s counsel moves for an award of attorney fees pursuant to 42 U.S.C. § 406(b)(1). Doc. 31 (the Motion). Plaintiff’s counsel states that following the Court’s reversal of the Commissioner’s decision denying disability benefits and remand of the case for further administrative proceedings, Plaintiff was awarded past-due benefits. *Id.* The Motion provides that 25% of the total amount of benefits awarded in this matter equates to \$15,435.50. *Id.*, citing 42 U.S.C. § 406(b)(1) (recovery of such fees under this section may not exceed 25% of the total past-due benefits). Plaintiff’s counsel states that upon award of this amount counsel will refund

\$5,172.39 (the previously awarded EAJA fee) directly to Plaintiff.<sup>1</sup> Doc. 31, *see Jackson v. Comm’r of Soc. Sec.*, 601 F.3d 1268, 1274 (11th Cir. 2010) (holding that counsel may effectuate the refund of a smaller EAJA award by either refunding the amount awarded under the EAJA to the client or deducting that amount from counsel’s request for § 406(b) fees).

The undersigned notes that Plaintiff’s counsel does not specifically provide the Court with the amount of the retroactive benefits, but instead concludes that \$15,435.50 is 25% of that figure. Even so, the Notice of Award attached as an exhibit provides that the Social Security Administration (SSA) withheld \$15,435.50 from the “past due benefits in case [SSA] need[s] to pay [Plaintiff’s] representative.” Doc. 31-3. Given the supporting documentation for the amount and the fact that the Commissioner does not oppose the Motion, the undersigned finds that counsel’s request for the attorneys fees does not run afoul of the limit imposed by § 406(b) and is reasonable under the circumstances of this case.

Accordingly, it is respectfully **RECOMMENDED** that the Unopposed Motion for Attorney Fees (Doc. 31) be **GRANTED** and Section 406(b)(1) fees be approved for Plaintiff’s counsel in the sum of \$15,435.50 to be paid out of the Plaintiff’s past due benefits currently being withheld by the Social Security Administration. *See* Doc. 31-1. Upon receipt of this sum, Plaintiff’s counsel is directed to remit \$5,172.39 directly to Plaintiff.

### **NOTICE TO PARTIES**

A party has fourteen days from this date to file written objections to the Report and Recommendation’s factual findings and legal conclusions. A party’s failure to file written

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<sup>1</sup> On March 7, 2018, the undersigned recommended that Plaintiff receive \$5,572.39, which includes \$5,172.39 in fees and \$400.00 in costs. Doc. 29. On March 27, 2018, the Court adopted the Report and Recommendation. Doc. 30.

objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1.

Recommended in Orlando, Florida on May 17, 2019.



DANIEL C. IRICK  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:  
Presiding Judge  
Counsel of Record  
Courtroom Deputy