

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

ANN MARIE SMITH,

Plaintiff,

v.

Case No.: 8:16-cv-1024-T-AAS

**NANCY W. BERRYHILL,¹
Commissioner of Social Security,**

Defendant.

ORDER

Ms. Smith's attorney Jeanette A. Kelley seeks an award of \$15,443.00 in attorney's fees pursuant to 42 U.S.C. § 406(b). Ms. Kelley advises that the defendant does not object. (Doc. 26, p.7).

Ms. Smith filed an application for disability insurance benefits ("DIB") on September 13, 2012. (Tr. 160). After disability specialists denied her application initially and after reconsideration, Ms. Smith requested a hearing before an Administrative Law Judge ("ALJ"), who ultimately found Ms. Smith not disabled. (Tr. 17– 29). (Tr. 837–46). Ms. Smith appealed the ALJ's decision. (Doc. 26, p. 2). After reviewing the record, the district court remanded the ALJ's decision. (*Id.*).

An ALJ then held a remand hearing for Ms. Smith, but the ALJ again found Ms. Smith not disabled. (Tr. 744–68). Ms. Smith appealed this second unfavorable ALJ decision. (Doc. 26, p.

¹ Nancy A. Berryhill is the Acting Commissioner of Social Security. Under Rule 25(d) of the Federal Rules of Civil Procedure, Ms. Berryhill should be substituted for former Commissioner Carolyn W. Colvin as the defendant in this suit. No further action needs to be taken to continue this suit due to the last sentence of Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

3). After reviewing the record, the court reversed the second ALJ decision. (Doc. 22). Ms. Smith then had a second remand hearing after which the ALJ issued a decision finding her disabled. (Doc. 26, p. 3). Accordingly, the Social Security Administration (“Administration”) issued a Notice of Award to Ms. Smith. (Doc. 26-3). In its Notice, the Administration informed Ms. Smith that it withheld \$15,443.00 from her past-due benefits in the event it had to pay Ms. Smith’s attorney. (*Id.* at 3). Attorney Jeanette Kelley now requests an award for the full \$15,443.00 for her services in this case pursuant to 42 U.S.C. § 406(b). (Doc. 26).

Under Section 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). However, an attorney awarded fees under the Equal Access to Justice Act (“EAJA”) and Section 406(b) must refund the smaller fee to the claimant. *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002)

Here, the Administration withheld \$15,443.00 from Ms. Smith’s past-due benefits for possible payment of attorney’s fees in federal court (Doc. 26-3, p. 3). After reviewing the fee agreement (Doc. 26-4) and the itemization of services rendered by counsel (Docs. 26-1, 26-2), I find an award of attorney’s fees in the amount of \$15,443.00 reasonable and appropriate. Because Attorney Jeanette Kelley was paid \$5,365.71 from previous EAJA awards (Docs. 26, p. 4), she must reimburse Ms. Smith for that amount.

Accordingly, it is **ORDERED**:

1. Plaintiff’s Attorneys’ Motion for Award of Attorney Fees under 42 U.S.C. § 406(b) (Doc. 26) is **GRANTED**;
2. Attorney Jeanette A. Kelley is awarded fees in the amount of \$15,443.00 pursuant to 42

U.S.C. § 406(b); and

3. Attorney Jeanette A. Kelley must reimburse Ms. Smith the \$5,365.71 in fees paid pursuant to the EAJA.

ORDERED in Tampa, Florida on this 25th day of January, 2018.

A handwritten signature in black ink, reading "Amanda Arnold Sansone". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

AMANDA ARNOLD SANSONE
United States Magistrate Judge