

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

**VINCENT NATHANIEL ROUNDTREE,**

**Plaintiff,**

**v.**

**Case No: 6:17-cv-566-Orl-41DCI**

**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: REQUEST FOR AUTHORIZATION TO CHARGE A  
REASONABLE FEE AND MEMORANDUM ON  
REASONABLE FEES PURSUANT TO 42 U.S.C. § 406(b)  
(Doc. 24)**

**FILED: April 4, 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. 24 (the Motion).<sup>1</sup> 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 \$34,154.00 in past-due benefits. (Doc. 24 at 2; 24-2 at 1). A quarter of the total amount of benefits awarded in this matter equates to \$8,538.50.

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<sup>1</sup> The Motion is unopposed. Doc. 24 at 3.

*See* 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, however, only seeks to recover \$2,538.50 in attorney fees pursuant to § 406(b). Doc. 24 at 2. Plaintiff's counsel states that the fees he seeks to collect includes a deduction of the attorney fees (\$3,616.67) previously awarded under the Equal Access to Justice Act (EAJA). *Id.* at 2; *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). Upon review, the undersigned finds that Plaintiff's counsel's request for \$2,538.50 in attorney 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 Motion (Doc. 24) be **GRANTED** and Plaintiff's counsel be authorized to charge and collect from Plaintiff the sum of \$2,538.50 in attorney fees.

#### **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 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 9, 2019.

  
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DANIEL C. IRICK  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Presiding District Judge  
Counsel of Record  
Unrepresented Party  
Courtroom Deputy