

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

JONATHAN T. MATTHEWS,

Plaintiff,

v.

Case No. 8:21-cv-967-AAS

MARTIN O'MALLEY,  
Commissioner of the Social  
Security Administration,<sup>1</sup>

Defendant.

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**ORDER**

Plaintiff Jonathan Matthew's counsel moves for an award of **\$15,691.25** in attorney's fees under 42 U.S.C. § 406(b). (Doc. 27). The Commissioner does not oppose Mr. Matthew's counsel's request. (*Id.* at p. 3).

Mr. Matthew applied for disability insurance benefits and supplemental security income on July 20, 2017 which was denied initially and on reconsideration. (Tr. 19). Mr. Matthew then requested a hearing before an Administrative Law Judge (ALJ), who found Mr. Matthew not disabled. (Tr. 19–31). The Appeals Council denied Mr. Matthew's request for review of the ALJ's decision. (Tr. 1). Mr. Matthew then filed a complaint in this court. (Doc. 1). The Commissioner then filed a motion to remand in this

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<sup>1</sup> On December 20, 2023, Martin O'Malley became the Commissioner of the Social Security Administration.

court, which the court granted. (Docs. 20, 21). The Commissioner found Mr. Matthew disabled on remand. (Doc. 27-2, p. 1).

Under Section 406(b), when a court enters judgment favorable to a Social Security claimant represented by counsel, the court may award attorney's fees not to exceed twenty-five percent of the claimant's total past-due benefits. 42 U.S.C. § 406(b)(1)(A). Based on the fee agreement that Mr. Matthew agreed his counsel could request twenty-five percent of past-due benefits for attorney's fees, an award of attorney's fees of \$15,691.25 is appropriate. (*See* Doc. 27-1).

The court awarded Mr. Matthew's counsel a total of \$2,649.47 in attorney's fees under the Equal Access to Justice Act (EAJA). (Doc. 26). When an attorney receives attorney's fees under the EAJA and Section 406(b), the attorney must refund the smaller fee. *Black v. Culbertson*, 470 F. App'x 737, 739 (11th Cir. 2012). Mr. Matthew's counsel must refund any attorney's fees awarded under the EAJA.

Thus, the Motion for Attorney's Fees Under 42 U.S.C. § 406(b) (Doc. 27) is **GRANTED**. Mr. Matthew's counsel is awarded **\$15,691.25** in attorney's fees and must refund to Mr. Matthew the \$2,649.47 in attorney's fees received under the EAJA.

**ENTERED** in Tampa, Florida on April 24, 2024.

*Amanda Arnold Sansone*

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AMANDA ARNOLD SANSONE  
United States Magistrate Judge