

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BRYAN J. SMITH,

Plaintiff,

v.

Case No. 8:21-cv-2906-AAS

MARTIN O'MALLEY,
Commissioner of the Social
Security Administration,¹

Defendant.

_____ /

ORDER

Plaintiff Bryan Smith's counsel moves for an award of **\$26,438.00** in attorney's fees under 42 U.S.C. § 406(b). (Doc. 25). The Commissioner does not oppose Mr. Smith's counsel's request. (*Id.* at p. 3).

Mr. Smith applied for disability insurance benefits on October 6, 2014 which was denied initially and on reconsideration. (Tr. 12). Mr. Smith then requested a hearing before an Administrative Law Judge (ALJ), who found Mr. Smith not disabled. (Tr. 12–34). The Appeals Council denied Mr. Smith's request for review of the ALJ's decision. (Tr. 1). Mr. Smith then filed a complaint in this court. (Doc. 1). The Commissioner then filed a motion to remand in this court, which the court granted. (Docs. 15, 17, 20). The

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

Commissioner found Mr. Smith disabled on remand. (Doc. 25-1, 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. Smith agreed his counsel could request twenty-five percent of past-due benefits for attorney's fees, an award of attorney's fees of \$26,438.00 is appropriate. (*See* Doc. 25-2).

The court awarded Mr. Smith's counsel a total of \$8,164.25 in attorney's fees under the Equal Access to Justice Act (EAJA). (Docs. 23, 24). 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. Smith'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. 25) is **GRANTED**. Mr. Smith's counsel is awarded **\$26,438.00** in attorney's fees and must refund to Mr. Smith any attorney's fees received under the EAJA.

ENTERED in Tampa, Florida on April 17, 2024.

Amanda Arnold Sansone

AMANDA ARNOLD SANSONE
United States Magistrate Judge