

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

KIMBERLY NEGLEY,

Plaintiff,

v.

Case No. 2:22-CV-563-KCD

COMMISSIONER OF SOCIAL
SECURITY,

Defendant,

ORDER

Having obtained an award of benefits, Plaintiff's counsel Erik W. Berger seeks attorney's fees under 42 U.S.C. § 406(b). (Doc. 23.) Defendant does not oppose the request. (Doc. 25.)

Section 406(b) provides that an attorney who obtains a benefits award on remand may petition for a reasonable fee—not to exceed twenty-five percent of the claimant's past-due benefits—for work performed before the court.

Here, Attorney Berger requests \$13,035.43, which is 25 percent of the past-due benefits awarded to Plaintiff. Attorney Berger further asserts that the previous EAJA award of \$5,200.00 will be returned to Plaintiff. (Doc. 23 at 2); see *Paltan v. Comm'r of Soc. Sec.*, 518 F. App'x 673, 674 (11th Cir. 2013) (noting that the attorney has the option of either refunding a prior EAJA award to the plaintiff directly or reducing the § 406(b) award by the same

amount). For the reasons stated in Attorney Berger's unopposed motion, the requested fee is both reasonable and appropriate under § 406(b).

Accordingly, Attorney Berger's motion for attorney fees under 42 U.S.C. § 406(b) (Doc. 23) is **GRANTED**, and he is awarded § 406(b) fees of \$13,035.43. The clerk is directed to enter judgment in this amount accordingly. Attorney Berger is further directed to return the previous EAJA award to Plaintiff within fourteen days of this order.

ORDERED in Fort Myers, Florida on December 17, 2024.



Kyle C. Dudek
United States Magistrate Judge