

2025 WL 373463

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United States District Court, E.D. New York.

Lauren SAPOSNICK, Plaintiff,
v.
Kilolo KIJAKAZI, Acting Commissioner
of Social Security, Defendant.

23-CV-3600 (PKC)

|
Signed February 3, 2025

Attorneys and Law Firms

Jeffrey D. Delott, Law Offices of Jeffrey Delott, Melville, NY, for Plaintiff.

Social Security Administration Generic, Social Security Administration-Office of the General Counsel, Woodlawn, MD, Anne M. Zeigler, [Daniella Marie Calenzo](#), Special Assistant United States Attorney, DOJ, Office of Program Litigation, Office 2, Social Security Administration, Baltimore, MD, Geoffrey Michael Peters, Social Security Administration, Office of the General Counsel, Baltimore, MD, for Defendant.

MEMORANDUM & ORDER

[PAMELA K. CHEN](#), United States District Judge:

*1 Plaintiff Lauren Saposnick filed this action under [42 U.S.C. § 405\(g\)](#), seeking judicial review of the Social Security Administration's ("SSA") denial of her claim for Disability Insurance Benefits ("DIB"). On August 5, 2024, the Court partially granted both parties' motions for judgment on the pleadings, remanding the Commissioner's decision for further consideration a second time. (*See* 8/5/2024 Memorandum & Order, Dkt. 5 ("8/5/2024 M&O") at 5.) Plaintiff now moves, through her attorney Jeffrey Delott ("Attorney Delott"), for an award of attorneys' fees and other expenses pursuant to the Equal Access to Justice Act ("EAJA"), [28 U.S.C. § 2412](#). Attorney Delott seeks market rate EAJA fees of \$54,910, or in the alternative, statutory rate EAJA fees of

\$16,321.19.¹ (*See* Decl. of Att'y Delott, Dkt. 19 ("Pl.'s Aff.") at 13; Reply Mem. Supp. Mot. Att'y Fees, Dkt. 23 ("Pl.'s Reply Mem.") at 13.) In addition to the attorneys' fees award, Plaintiff's counsel seeks \$402 for filing fees, \$276.04 for electronic legal research charges, and \$1,280 for paralegal fees. (Pl.'s Aff. at 14.) The Commissioner contends that Plaintiff's application for attorneys' fees should be denied or reduced because special circumstances exist making the requested amount unjust and because the hours claimed by Plaintiff's counsel are excessive and unreasonable. For the reasons set forth below, the Court grants Plaintiff's motion for fees in part, and awards Plaintiff's counsel \$11,857.07 in attorneys' fees, \$1,280 in paralegal fees, and \$276.04 in expenses. Plaintiff is further awarded \$402 in filing fee costs pursuant to [28 U.S.C. § 1920](#).

¹ The calculations for market rate EAJA fees and statutory rate EAJA fees are based on a total of 64.6 hours worked, including the 5.2 hours Attorney Delott spent on the reply brief, multiplied either by the market rate of \$850 per hour or by the statutory rate calculated by him of \$252.65 per hour. (*See* Pl.'s Reply Mem., Dkt. 23 at 13; Pl.'s Aff, Dkt. 19 at 13.)

BACKGROUND²

² The Court assumes the parties' familiarity with the facts of this case, detailed in the Court's previous Order, and only recounts those facts that are relevant to the instant motion. *See Saposnick v. Kijakazi*, No. 23-CV-3600 (PKC), 2024 WL 3647658 (E.D.N.Y. Aug. 5, 2024).

Plaintiff filed an application for DIB on November 29, 2016, alleging that her disability began May 11, 2015. (Administrative Tr., Dkt. 8 ("Tr.") at 99³; *see also* 8/5/2024 M&O at 1.) After the SSA initially rejected her application, Administrative Law Judge Margaret Donaghy ("ALJ Donaghy") held three hearings between October 2018 and July 2019, ultimately denying Plaintiff's application for benefits. (Tr. at 17, 28–29, 110.) Plaintiff appealed, and this Court remanded the case to the SSA on February 28, 2022. *See Saposnick v. Comm'r of Soc. Sec.*, No. 20-CV-3844 (PKC), 2022 WL 595184, at *1, 3 (E.D.N.Y. Feb. 28, 2022).

³ Page references prefaced by "Tr." refer to the continuous pagination of the Administrative Transcript, (*see* Dkt. 8), appearing in the lower right corner of each

page, and not to the internal pagination of the constituent documents or the pagination generated by the Court's CM/ECF docketing system.

*2 Upon remand, ALJ Donaghy once again denied Plaintiff's application for disability benefits on similar grounds as her previous ruling, and Plaintiff appealed to the Court a second time. (Tr. at 630–42; *see also* 8/5/2024 M&O at 2.) This time, the parties agreed that ALJ Donaghy had failed to comply with the Court's previous Memorandum and Order. However, they disagreed on the appropriate remedy. (8/5/2024 M&O at 2.) Plaintiff sought remand "only for the calculation of benefits," whereas Defendant asked the Court to "remand so that the ALJ [could] adjudicate Plaintiff's application for benefits for a third time." (*Id.*) The Court partially granted both Plaintiff's and Defendant's motions, remanding for further proceedings, but directing the ALJ to complete the necessary proceeding "within 60 days of the issuance of [the Court's] Order." (*Id.* at 5.) The ALJ partially approved Plaintiff's DIB application on September 25, 2024. (Pl.'s Aff. at 14.) Thereafter, Plaintiff's counsel filed a motion for attorneys' fees on October 6, 2024, (*see* Mem. Supp. Pl.'s Mot. Att'y Fees, Dkt. 20 ("Pl.'s Mem.")), and the Commissioner filed an opposition on November 5, 2024, (*see* Comm'r Mem. Opp'n to Pl.'s Mot., Dkt. 21 ("Opp'n Mem.")).

DISCUSSION

The EAJA provides that a court shall "award to a prevailing party other than the United States fees and other expenses ... incurred by that party in any civil litigation (other than cases sounding in tort)." 28 U.S.C. § 2412(d)(1)(A). In a case involving a successful challenge to a decision by the SSA, eligibility for an award of fees and other expenses requires (1) that the claimant be a "prevailing party," (2) that the Commissioner's position was not "substantially justified," and (3) that no "special circumstances make an award unjust." *Comm'r, I.N.S. v. Jean*, 496 U.S. 154, 158 (1990); § 2412(d)(1)(B).

Here, the Commissioner neither disputes that Plaintiff is a prevailing party,⁴ nor argues that the Commissioner's position was substantially justified.⁵ (*See generally* Opp'n Mem., Dkt. 21.) Instead, the Commissioner contends that (1) Plaintiff's request for fees is unreasonable because it is above the "guideline range" of 20–40 hours; (2) Plaintiff did not properly calculate the hourly rate; (3) "special circumstances" exist justifying a denial or

significant reduction of attorneys' fees; and (4) Plaintiff "engaged in conduct which unduly and unreasonably protracted the final resolution" of the case, warranting a reduction of fees under 28 U.S.C. § 2412(d)(1)(C). (*Id.*) Further, Plaintiff's counsel argues that "Defendant's initial litigation tactics constituted bad faith," (Pl.'s Mem. at 2), warranting market rate EAJA fees pursuant to 28 U.S.C. § 2412(b), instead of the statutory rate, (*see generally id.* at 6–9).

⁴ A party who obtains a remand order is considered a prevailing party. *See Berry v. Comm'r of Soc. Sec.*, No. 20-CV-2972 (PKC), 2022 WL 4661529, at *3 n.1 (E.D.N.Y. Sept. 30, 2022) (citing, *inter alia*, *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993)). The Court remanded this case for further administrative proceedings; as such, Plaintiff qualifies as a "prevailing party." (8/5/2024 M&O at 5.)

⁵ "Once a party has demonstrated that it is a prevailing party under the EAJA, the burden shifts to the government to demonstrate that its litigation position was 'substantially justified.'" *Commodity Futures Trading Comm'n v. Dunn*, 169 F.3d 785, 786 (2d Cir. 1999) (citing *Pierce v. Underwood*, 487 U.S. 552, 565 (1988)).

The Court construes the parties' arguments to broadly relate to two categories: (1) the appropriate hourly rates to be applied in this case, and (2) the appropriate total number of hours for which fees have been requested. The Court first assesses the issue of reasonable hourly rates.

I. Reasonable Hourly Rates

A. Bad Faith

"Under sections 2412(b) [of the EAJA], at the court's discretion, a plaintiff can recover attorney's fees at the prevailing market rate, rather than the statutory rate, if he establishes that the Commissioner acted in bad faith in either opposing the claimant's benefits claim on the merits or in opposing the claimant's application for EAJA fees." *Bailey v. Astrue*, No. 10-CV-0865 (DLI), 2013 WL 2372295, at *4 (E.D.N.Y. May 31, 2013) (citing *Wells v. Bowen*, 855 F.2d 37, 46 (2d Cir. 1988)). Bad faith exists where "the losing party's claims were entirely without color and made for reasons of harassment or delay or for other improper purposes." *Wells*, 855 F.2d at 46 (internal

quotation marks omitted).

*3 The Court finds that no EAJA award predicated on bad faith is warranted here. “In order to award bad faith fees, the district court must find that the losing party’s claim was (1) meritless; and (2) brought for improper purposes such as harassment or delay.” *Kerin v. U.S. Postal Serv.*, 218 F.3d 185, 190 (2d Cir. 2000). “The test is conjunctive and neither meritlessness alone nor improper purpose alone will suffice.” *Id.* Plaintiff requests market rate EAJA fees, arguing that Defendant’s position was “not substantially justified because it pursued litigation when it should have known that ALJ Donaghy failed to apply Defendant’s rules and regulations correctly,” and that it was not until “[Defendant’s] dispositive motion papers were due [that] Defendant offer[ed] a remand.” (Pl.’s Mem. at 7–8.) Plaintiff claims that this behavior is typical of the SSA, since it “does not pay interest on past due benefits,” which results in it “usually wait[ing] until after claimants file their dispositive motion to take [Social Security Disability] cases seriously, and then offer[ing] a remand shortly before their cross motions are due.” (*Id.* at 8–9.) These arguments are insufficient to meet the high standard of showing “bad faith,” which requires “far more egregious conduct ... than is required under section 2412(d)[’s substantially justified standard].” *Wells*, 855 F.2d at 46. Moreover, the Commissioner’s motion for remand was not “meritless” since the Court granted that motion in part and remanded the case for further proceedings. (See 8/5/2024 M&O at 5.) Accordingly, the Court finds that there is no evidence of “bad faith,” and denies Plaintiff’s request for an EAJA fee award at market rate pursuant to 28 U.S.C. § 2412(b).

B. Statutory Rate: Consumer Price Index

In the alternative, Plaintiff requests EAJA fees based on the statutory rate, adjusted by the urban consumer price index (“CPI-U”) of the New York region, of \$252.65 per hour. (Pl.’s Aff. at 13.) Defendant contends that this hourly rate was improperly calculated and that the correct rate should be \$244.62 for work done in 2023 and \$250.59 for work done in 2024. (Opp’n Mem. at 11–12.) “Cost of living adjustments may be made for inflation and calculated according to the Consumer Price Index (‘CPI’) for each year in which services were performed.” *Salvo v. Comm’r of Soc. Sec.*, 751 F. Supp. 2d 666, 673 n.9 (S.D.N.Y. 2010). Courts “determin[e] the cost-of-living adjustment by multiplying the basic EAJA rate by the current [CPI] for urban consumers (CPI-U), and then dividing the product by the CPI-U in the month that the cap was imposed ([which is] March 1996 for

post-amendment cases).” *Safranek v. Wormuth*, No. 23-CV-5985 (JCM), 2024 WL 5186599, at *3 (S.D.N.Y. Dec. 19, 2024) (citation omitted).

Here, Plaintiff uses a single CPI-U of 336.534, adjusted for “New York-Newark-Jersey City,” (Pl.’s Aff. at 13 (citing U.S. Bureau of Lab. Statistics Website)), whereas Defendant uses two CPI-Us—304.702 for 2023 and 312.145 for 2024—based on a “U.S. City Average,” (Opp’n Mem. at 12). The Court partially agrees with both parties and finds that while the CPI-U must be separately calculated for 2023 and 2024, adjusting the CPI-U to the New York region is reasonable. See *Make Rd. N.Y. v. Blinken*, No. 19-CV-11633 (GBD) (OTW), 2024 WL 4664712, at *13 (S.D.N.Y. Sept. 4, 2024) (finding Plaintiff’s proposal for “using the CPI-U for the Northeast region” reasonable and stating that “[t]he court must apply a different [cost of living adjustment], as measured by the [CPI-U] for each year in which legal work was performed, rather than applying a single adjustment to the total hours billed”). The appropriate CPI-U, adjusted for the New York region, is 321.998 for 2023 and 332.799 for 2024.⁶ And the March 1996 CPI-U for the New York region was 166.50. See *id.* at *13 (using 166.5 as the March 1996 CPI-U for the Northeast Region). Based on these figures, the Court finds the reasonable EAJA rates to be:

2023: $\$125 \times (321.998 / 166.5) = \241.740 (annual average)⁷

2024: $\$125 \times (332.799 / 166.5) = \249.849 (average from January to September 2024)⁸

⁶ U.S. Bureau of Labor Statistics, Consumer Price Index—New York-Newark-Jersey City, NY-NJ-PA, “All Items” (1982–84=100), available at <https://data.bls.gov/PDQWeb/cu>.

⁷ Plaintiff’s statement that the “annual CPI for 2023 [for the New York region] is 324.498,” (Pl.’s Reply Mem. at 12), is incorrect; 324.498 is the average CPI-U for the *second half* of 2023, i.e. between July and December 2023. (See CPI-U Table for N.Y., Dkt. 22-1.) Moreover, Plaintiff attaches an exhibit showing an alternative CPI-U table that uses 1967 as its base reference year, with no explanation or argument as to why that table is more appropriate than the commonly-used CPI-U table with 1982–84 as its base reference years. (See Dkt. 22-2.) The Court accordingly disregards Plaintiff’s assertion that the Court should consider this alternative CPI-U table. Finally, Plaintiff’s counsel’s calculations in the reply brief fail to use the correct March 1996 CPI-U number as the denominator in the equation—counsel uses the U.S. average of 155.7 instead of the New York region CPI-U of 166.5 in the denominator, which results in higher market rates than

accurate. (See Pl.'s Mem. at 12; see also CPI-U Table for N.Y., Dkt. 22-1.)

⁸ The Court calculates the CPI-U of 332.799 by taking the average of the CPI-Us between January and September 2024, based on selecting "New York-Newark-Jersey City, NY-NJ-PA" and "All Items" from the data table available at <https://data.bls.gov/PDQWeb/cu>.

II. Reasonable Hours

*4 Plaintiff's counsel worked for 54.2 hours in 2023 and 10.4 hours in 2024, including 2 hours on the instant fee motion, 3.2 hours on miscellaneous tasks, and 5.2 hours on the reply. (See Pl.'s Reply Mem. at 13; Billable Hrs. Time Sheet, Dkt. 19-1 at ECF 1-2.⁹) Plaintiff's counsel thus worked for a total of 64.6 hours.

⁹ Citations to "ECF" refer to the pagination generated by the Court's CM/ECF docketing system and not the document's internal pagination.

A. Guideline Range

Defendant first argues that the hours Plaintiff's counsel worked on this action vastly exceed the "guideline range" of 20-40 hours. (See Opp'n Mem. at 3-8.) When awarding attorneys' fees in excess of that range, "[r]elevant factors to weigh include the size of the administrative record, the complexity of the factual and legal issues involved, counsel's experience, and whether counsel represented the claimant during the administrative proceedings." *Jimenez ex rel. D.S.J. v. Comm'r of Soc. Sec.*, No. 21-CV-2030 (KMK) (AEK), 2023 WL 7304680, at *2 (S.D.N.Y. May 31, 2023), *R. & R. adopted*, 2023 WL 6533501 (S.D.N.Y. Oct. 6, 2023).

Here, the administrative record was almost 900 pages long, which supports Plaintiff's request for 64.6 hours of work. See *Daily v. Comm'r of Soc. Sec.*, No. 18-CV-1080 (AT) (KNF), 2020 WL 1322528, at *3 (S.D.N.Y. Mar. 19, 2020) (approving 68.3 hours for an administrative record 900 pages long). Moreover, "courts in this District have rejected the notion that experience alone justifies a reduction in the hours requested." *Santiago v. Comm'r of*

Soc. Sec., No. 20-CV-11104 (VF), 2023 WL 21853, at *4 (S.D.N.Y. Jan. 3, 2023). The Court nevertheless notes that Attorney Delott represented this case at the administrative level and gives credence to the Commissioner's argument that "the extensive overlap between the work product at the administrative level, the work product in the prior civil action, and the work product filed here indicates either ... reuse of prior work product ... [or] duplication of effort."¹⁰ (Opp'n Mem. at 7.) And though this case faced considerable delays in its ultimate adjudication, the Court is further persuaded by the Commissioner's assertion that the issues themselves were not particularly complex. This is especially evidenced by the fact that, by the time this case came before this Court a second time, both parties agreed that a remand was necessary but only disagreed as to the nature of that remand. (See 8/5/2024 M&O at 2.)

¹⁰ Specifically, the Commissioner argues that the presentation of Plaintiff's medical facts in the Complaint are identical to portions of her reply brief from the prior action. (Compare Dkt. 1 at 2-7, 16-17, 23-24), with *Saposnick v. Comm'r of Soc. Sec.*, No. 20-CV-3844 (PKC), Dkt. 26 at 3-8. Moreover, Plaintiff's initial brief "largely mirrors the same three arguments presented to the Appeals Council" as well as those presented in her prior civil action. (Compare Dkt. 10, with Tr. 436-77) and *Saposnick v. Comm'r of Soc. Sec.*, No. 20-CV-3844 (PKC), Dkts. 25-26. Importantly, Plaintiff does not dispute the truth of Defendant's assertions, arguing instead that this only supports Plaintiff's claim that Defendant was acting in bad faith by waiting so long to offer a voluntary remand. (See Pl.'s Reply Mem. at 7-9.)

"In circumstances where there is a duplication of effort, a court has discretion to reduce the amount of fees awarded." *Cutajar v. Comm'r of Soc. Sec.*, No. 19-CV-05569 (SDA), 2020 WL 2999232 (S.D.N.Y. June 4, 2020) (citing *Padula v. Colvin*, 602 F. App'x 25, 28 (summary order) (2d Cir. 2015)). Plaintiff's counsel's request for 17.9 hours of work on the Complaint and 22 hours on the initial brief (a total of 39.9 hours) is thus excessive and a downward reduction is warranted. Though the Commissioner requests that the Court reduce the hours from 39.9 to 17, such a drastic reduction is unnecessary given that the work products were not wholly identical and presumably required further editing and review. Based on the considerations above, the Court limits the hours Attorney Delott can request for the work done on the Complaint and initial brief to 24 hours, a reduction of 15.9 hours worked in 2023.¹¹

¹¹ The Court further finds that 12.8 hours of paralegal work, at \$100 per hour, most of which was spent preparing a "symptoms table" that was used in the reply brief, is reasonable. (Dkt. 19-3 at ECF 1); see *Douyon*

v. N.Y. Med. Health Care, P.C., 49 F. Supp. 3d 328, 348 (E.D.N.Y. 2014) (“In the Second Circuit, prevailing paralegal, law clerk and legal assistant rates have more recently been found to be anywhere from \$70 to \$100 per hour.”).

*5 This reduction results in a calculation of EAJA fees for 38.3 hours worked in 2023 and 10.4 hours worked in 2024, totaling 48.7 hours. Applying the market rate calculated above,¹² the new EAJA fees amount to \$9,258.64 in 2023 and \$2,598.43 for 2024, totaling \$11,857.07 for 48.7 hours of work.

¹² The relevant market rates, as calculated by the Court *supra*, are \$241.740 for 2023 and \$249.849 for 2024.

B. Special Circumstances

Defendant further argues that all hours billed after September 8, 2023—when Defendant offered a voluntary remand to Plaintiff, which she rejected—should be disregarded because Plaintiff’s rejection of the remand offer was unreasonable and because a remand was the Court’s ultimate remedy. (See Opp’n Mem. at 8–10) (citing *McKay v. Barnhart*, 327 F. Supp. 2d 263, 268 (S.D.N.Y. 2004).) “The EAJA’s special circumstances exception is a safety valve that gives the court discretion to deny awards where equitable considerations dictate an award should not be made.” *Vincent v. Comm’r of Soc. Sec.*, 651 F.3d 299, 303 (2d Cir. 2011) (internal quotations omitted). Where fees are “expended on discrete efforts that achieved no appreciable advantage, and where the claim of the prevailing parties rests largely on a result to which the claimant made no contribution, a district court may consider whether special circumstances render an award of attorney’s fees less just.” *United States v. 27.09 Acres of Land*, 43 F.3d 769, 775 (2d Cir. 1994) (holding that special circumstances existed where plaintiff played a marginal role in litigation involving multiple co-plaintiffs).

Here, Plaintiff’s decision to reject the government’s voluntary remand offer was not “unreasonable.” Unlike the facts in *McKay*, Plaintiff would not have “attained the same result had [s]he accepted the offer for remand rather than opposing it.” 327 F. Supp. 2d at 268. Plaintiff specifically argued for a remand for the purpose of calculating benefits, and though the Court found that such a remand was not appropriate in this case, it nevertheless recognized the significant delays in the final adjudication of Plaintiff’s benefits application and gave ALJ Donaghy specific instructions for completing further proceedings within 60 days of the Court’s Order. (8/5/2024 M&O at 5.) Had Plaintiff accepted Defendant’s remand offer when it was made to her, the outcome would not have come with this additional condition. The Court accordingly does not agree that a further reduction of hours due to “special circumstances” is warranted.¹³

¹³ For the same reasons, the Court rejects Defendant’s argument that Plaintiff “engaged in conduct which unduly and unreasonably protracted the final resolution” of the case, warranting a reduction of fees under 28 U.S.C. § 2412(d)(1)(C). (Opp’n Mem. at 10–11.)

CONCLUSION

For the reasons discussed above, the Court grants-in-part and denies-in-part Plaintiff’s motion for EAJA fees pursuant to 28 U.S.C. § 2412(d)(1). Plaintiff is awarded \$11,857.07 in attorneys’ fees, \$1,280 in paralegal fees, and \$276.04 in expenses. Plaintiff is further awarded \$402 in filing fee costs pursuant to 28 U.S.C. § 1920.

SO ORDERED.

All Citations

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United States District Court, E.D. New York.

Ta-Wanya WILLIAMS, Plaintiff,
v.
Kilolo KIJAKAZI, Acting Commissioner
of Social Security, Defendant.

22-cv-7769 (NRM)

|
Signed August 28, 2025

Attorneys and Law Firms

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MEMORANDUM & ORDER

NINA R. MORRISON, United States District Judge:

*1 This case involves an appeal from the Social Security Administration's denial of disability benefits. Presently before this Court are two motions for attorney's fees, the first pursuant to the Equal Access to Justice Act ("EAJA") and the second pursuant to 42 U.S.C. § 406(b). For the reasons discussed below, this Court grants both motions.

BACKGROUND

On August 17, 2021, Plaintiff Ta-Wanya Williams retained Jeffrey Delott, Esq. ("counsel") of the Law Offices of Jeffrey Delott to challenge in federal court the Social Security Administration's ("SSA") denial of

disability benefits. Plaintiff signed a contingency attorney fee agreement (the "Agreement") with counsel, which provides, in relevant part, "[i]f a court awards benefits, then [counsel] will request a fee of twenty-five percent (25%) of the total past due benefits payable to the claimant ... [by] fil[ing] a fee petition ... pursuant to the applicable statute and regulations." Social Security Retainer Fee Agreement 1, ECF No. 31-1.¹ The Agreement further provides, "Claimant authorizes [counsel] to seek attorney's fees under [the] EAJA, either on Claimant's behalf or on behalf of [counsel]." *Id.* The Agreement addresses how counsel will proceed if he receives fees under both the EAJA and section 406(b): "If [counsel] receives fees from the Federal Court from Claimant's benefits and from EAJA for the same work, then [counsel] will refund the lower fee to Claimant." *Id.* The Agreement explicitly states counsel "will seek NO FEE unless the claim is approved by the SSA or Federal Court." *Id.* at 2.

¹ All page references use ECF pagination except where noted.

Thereafter, Plaintiff filed a Complaint seeking judicial review of SSA's adverse decision in her period of disability and disability insurance benefits case under 42 U.S.C. § 405(g). Compl., ECF No. 1 (Dec. 20, 2022). Plaintiff specifically sought remand and an expedited hearing within 60 days, as well as costs and attorney's fees. *Id.* ¶ (g), (i). Plaintiff filed an accompanying motion for leave to proceed *in forma pauperis* that same day. Mot. for Leave ("Mot. for Leave"), ECF No. 2 (Dec. 20, 2022). This Court granted leave to proceed *in forma pauperis* by docket Order dated January 3, 2023.

The Commissioner of the SSA ("the Commissioner") filed the administrative transcript, *see* Administrative Tr. ("A.T."), ECF No. 7 (Feb. 28, 2023), and Plaintiff promptly filed a motion for judgment on the pleadings with supporting briefing and declaration. Pl. Mot. for J. on the Pleadings ("Pl. Mot. for J."), ECF No. 8 (Mar. 1, 2023); Pl. Mem. in Supp. of Mot. for J. ("Pl. Mem. in Supp."), ECF No. 9 (Mar. 1, 2023); Delott Decl. in Supp. of Mot. for J., ECF No. 10 (Mar. 1, 2023).

During the course of briefing Plaintiff's motion, the Commissioner indicated a willingness to resolve the case with a voluntary remand and requested a 30-day extension to file a motion for remand. Comm'r Mot. for Extension of Time, ECF No. 12 (Mar. 29, 2023). Plaintiff filed a letter opposing the Commissioner's request for an extension of time. Pl. Reply in Opp'n ("Pl. Reply"), ECF No. 13 (Mar. 29, 2023). In this letter, counsel represented

that Plaintiff, who by that time had then been unable to work for nearly three years, was facing an increasingly precarious financial situation during the pendency of this case, including falling behind on her mortgage and potentially losing her home. *Id.* at 1. The letter also documented counsel's previous advocacy on Plaintiff's behalf before the SSA Appeals Council and his negotiations with counsel for the SSA to informally resolve this case through a stipulated remand. *Id.* at 1–2, 4–5. The letter further indicated that negotiations towards informal resolution proved ultimately unsuccessful. *Id.* at 3. This Court granted in part and denied in part the Commissioner's requested extension by a docket Order dated March 30, 2023, granting the Commissioner an additional five days to file its responsive papers.

*2 Shortly thereafter, the Commissioner filed a cross motion for judgment on the pleadings, conceding that remand was appropriate but requesting that the Court not order an expedited decision. Comm'r Mot. for J. on the Pleadings, ECF No. 14 (Apr. 5, 2023). Plaintiff promptly filed an opposition brief addressing the Commissioner's arguments. Pl. Mem. in Opp'n ("Pl. Mem. in Opp'n 1"), ECF No. 15 (Apr. 6, 2023). While this Court considered these cross-motions, Plaintiff filed another letter that underscored her precarious financial circumstances and requested an expedited decision from this Court. Pl. Letter ("Pl. Letter"), ECF No. 16 (Feb. 16, 2024).

By docket Order dated February 20, 2024, the Court granted in part and denied in part both motions for judgment on the pleadings. Pursuant to 42 U.S.C. § 405(g), the Court remanded the Commissioner's decision with instructions to explicitly apply the treating physician rule, codified at 20 C.F.R. § 404.1527(d), to the medical opinion of Plaintiff's doctor and to provide good reasons for affording a determined weight to the doctor's opinion in accordance with 20 C.F.R. § 404.1527. The Court noted, and agreed with, the parties' mutual understanding that the SSA Administrative Law Judge ("ALJ") erred in weighing and evaluating the opinion of Plaintiff's doctor, which is entitled to deference and must be weighed explicitly using all the factors provided in 20 C.F.R. §§ 404.1527 and 416.927. The Court found that the ALJ had not explicitly weighed the factors outlined in *Burgess v. Astrue*, 537 F.3d 117, 129 (2d. Cir. 2008), and that this failure constituted a "procedural error." See *Estrella v. Berryhill*, 925 F.3d 90, 96 (2d Cir. 2019) ("If the Commissioner has not [otherwise] provided 'good reasons' [for its weight assignment], [the Court is] unable to conclude that the error was harmless and [should] remand for the ALJ to comprehensively set forth [its] reasons."). Because the ALJ failed to accord due deference to the doctor's opinion or to explicitly weigh

the *Burgess* factors in the SSA determination, the Court was unable to conclude this procedural error was harmless because "a searching review of the record" did not assure the Court "that the substance of the treating physician rule was not traversed." See *id.* (requiring this analysis to determine whether such error was harmless).

Denying in part Plaintiff's motion, the Court declined to make a disability finding as to Plaintiff or to remand only for a calculation of damages. Instead, the Court concluded that the ALJ should be given an opportunity to reweigh the doctor's opinion. However, "[u]nderstanding the continued hardship faced by the claimant," the Court imposed a deadline on the Commissioner to make a final decision. *Urena v. Berryhill*, No. 18-CV-3645 (JLC), 2019 WL 1748131, at *16 (S.D.N.Y. Apr. 19, 2019) (collecting cases). The SSA's procedures provide for expedited hearings when a plaintiff demonstrates a dire need situation, including a danger of imminent eviction or foreclosure. See Hearings, Appeals, and Litigation Law Manual (HALLEX) I-2-1-40(A)(5). The Court found that Plaintiff — through her representations of imminent risk of homelessness, supported by a docketed past-due mortgage statement — satisfied the dire need standard. The Court directed the Commissioner to expedite the remand of Plaintiff's case and render a final decision within 60 days. See *Butts v. Barnhart*, 388 F.3d 377, 387 (2d Cir. 2004) (suggesting procedural time limits to ensure speedy disposition of Social Security cases upon remand by district courts).

Following the Court's decision on the cross motions, the Commissioner filed a motion to alter judgment, see Comm'r Mot. to Alter J., ECF No. 18 (Mar. 19, 2024), and Plaintiff responded the next day. Pl. Mem. in Opp'n ("Pl. Mem. in Opp'n 2"), ECF No. 19 (Mar. 20, 2024). However, the parties soon informed the Court that this motion was rendered moot by a decision fully favorable to Plaintiff that was issued by the SSA ALJ. Pl. Letter, ECF No. 20 (Mar. 25, 2024); Comm'r Letter, ECF No. 21 (Mar. 27, 2024).

*3 Following this successful resolution of Plaintiff's claim for benefits, Plaintiff moved for attorney's fees under the EAJA. Mot. for Att'y Fees pursuant to the EAJA ("EAJA Fee Mot."), ECF No. 22 (Apr. 22, 2024). The Commissioner opposed this motion. Comm'r Mem. in Opp'n, ECF No. 27 (May 22, 2024).

The SSA issued a Notice of Award to Plaintiff, indicating that Plaintiff's past due benefits totaled \$129,588.72 and that the agency was withholding 25 percent of these benefits, or \$32,397.18, to pay any approved attorney's fees.² Notice of Award ("Notice of Award") 5, ECF No.

31-2. This Notice of Award is dated April 20, 2024. *Id.* However, counsel represented that, despite his diligence, he was unable to obtain the Notice of Award until May 29, 2024. Pl. Mem. in Supp. of 406(b) Fee Mot. 2–3, ECF No. 31 (May 29, 2024); *see also* ECF No. 31-3 (documenting efforts to obtain the Notice of Award).

² The Notice of Award does not explicitly state the total past due benefits to which Plaintiff is entitled. The Court arrives at this \$129,588.72 sum by multiplying the \$32,397.18 withholding, which the Notice of Award indicates is 25 percent of past due benefits, by four.

Plaintiff subsequently moved for an attorney’s fees authorization under [section 406\(b\)](#). Mot. for Att’y Fees pursuant to 406b (“406(b) Fee Mot.”), ECF No. 30 (May 29, 2024). The Commissioner filed a response and requested that any award under [section 406\(b\)](#) be paid out of Plaintiff’s withheld past due benefits, pursuant to agency policy; the Commissioner neither supported nor objected to Plaintiff’s requested fees authorization. Comm’r Resp. to 406(b) Fee Mot., ECF No. 32 (May 30, 2024).

DISCUSSION

The Court addresses each of the two pending fee motions below.

I. Motion for Attorney’s Fees Pursuant to the EAJA

The EAJA provides that:

a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in ... proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

[28 U.S.C. § 2412\(d\)\(1\)\(A\)](#). To establish entitlement to EAJA fees, a party must (1) timely file their fee motion pursuant to [28 U.S.C. § 2412\(d\)\(1\)\(B\)](#); (2) show that they were the prevailing party and eligible to receive an award; (3) set forth an itemized statement of actual time expended and the hourly rate at which fees were computed; and (4) allege that the position of the United

States was not substantially justified and that no special circumstances exist that make an award unjust. [Barbour v. Colvin](#), 993 F. Supp. 2d 284, 289 (E.D.N.Y. 2014). “Once a party has demonstrated that it is a prevailing party under the EAJA, the burden shifts to the government to demonstrate that its litigation position was ‘substantially justified.’ ” [Commodity Futures Trading Comm’n v. Dunn](#), 169 F.3d 785, 786 (2d Cir. 1999). Additionally, the fees awarded under the EAJA must be “reasonable.” [28 U.S.C. § 2412\(d\)\(2\)\(A\)](#); *see also* [Hogan v. Astrue](#), 539 F. Supp. 2d 680, 682 (W.D.N.Y. 2008) (citing [Hensley v. Eckerhart](#), 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)) (“The Court must determine if the hours expended and the rates charged are reasonable, and the fee applicant has the burden to establish the reasonableness of both.”).

^{*4} Here, there is no dispute that Plaintiff’s EAJA fee motion was timely. “[A] ‘final judgment’ for purposes of [28 U.S.C. § 2412\(d\)\(1\)\(B\)](#) means a judgment rendered by a court that terminates the civil action for which EAJA fees may be received. The 30-day EAJA clock begins to run after the time to appeal that ‘final judgment’ has expired.” [Melkonyan v. Sullivan](#), 501 U.S. 89, 96, 111 S.Ct. 2157, 115 L.Ed.2d 78 (1991); *see also* [Fed. R. App. P. 4\(a\)\(1\)\(B\)\(ii\)](#) (allowing 60 days from the entry of judgment for appeals involving United States agencies). This Court’s February 20, 2024 docket Order disposed of the case in Plaintiff’s favor, and the Clerk of Court entered judgment the next day, on February 21, 2024. ECF No. 17. The Commissioner had 60 days from entry of judgment, until April 21, 2024, to appeal the Court’s decision; the time expired without the Commissioner taking an appeal. Plaintiff filed her EAJA fee motion on April 22, 2024, the first day after the period to appeal elapsed and well within the 30-day time limit [28 U.S.C. § 2412\(d\)\(1\)\(B\)](#).

Nor is there any dispute that Plaintiff was the prevailing party. “The United States Supreme Court has held that a remand under sentence four of [42 U.S.C. § 405\(g\)](#) is a final judgment that qualifies a plaintiff for prevailing party status.” [McKay v. Barnhart](#), 327 F. Supp. 2d 263, 266–67 (S.D.N.Y. 2004) (citing [Shalala v. Schaefer](#), 509 U.S. 292, 302, 113 S.Ct. 2625, 125 L.Ed.2d 239 (1993)). Nor does the Commissioner contend that SSA’s position was substantially justified.

Additionally, Plaintiff has introduced the requisite itemized accounting of counsel’s time, *see* Delott Decl. in Supp. of EAJA Fee Motion, Exhibit B, ECF No. 24-2 (Apr. 22, 2024) (documenting 86.3 hours), and outlined the applicable rate. The applicable hourly rate is determined by [28 U.S.C. § 2412\(d\)\(2\)\(A\)](#), which set a

base rate of \$125 in March 1996 and allows for cost-of-living adjustments. Applying this cost-of-living adjustment, Plaintiff arrived at an hourly rate of \$247.62. Delott Decl. in Supp. of EAJA Fee Motion (“Delott Decl.”) ¶¶ 33–34, ECF No. 24 (Apr. 22, 2024); *see also Walker v. Comm’r of Soc. Sec.*, No. 20-CV-4426 (WFK), 2022 WL 4079576, at *1 (E.D.N.Y. Sep. 6, 2022) (confirming calculations similar to Plaintiff’s). The Commissioner does not contest this hourly rate.

Instead, the only dispute here is whether the number of hours counsel expended to litigate this case is reasonable. As the Commissioner notes, “[d]istrict courts in this Circuit generally hold that twenty to forty hours is a reasonable expenditure of counsel time for routine social security cases.” *Barbour*, 993 F. Supp. 2d at 290. However, “[t]he Court has broad discretion in determining whether the amount of time expended by plaintiff’s counsel was reasonable.” *Walker*, 2022 WL 4079576, at *2 (citing *Aston v. Sec’y of Health & Human Servs.*, 808 F.2d 9, 11 (2d Cir. 1986)). “Factors justifying a larger award include the factual, substantive, and procedural complexity of the case; the size of the administrative record; and the efficacy of the attorney’s efforts.” *Id.* (quoting *Stewart v. Comm’r of Soc. Sec.*, No. 12-CV-3121 (AJN), 2014 WL 2998530, at *3 (S.D.N.Y. July 2, 2014)) (citation modified).

The Court finds that Plaintiff’s requested EAJA fee award is reasonable for three reasons. First, this case involved a voluminous administrative transcript of 1,956 pages, which counsel needed to review and parse before cogently presenting it to this Court. *See Rivera Hernandez v. Comm’r Soc. Sec. Admin.*, No. 19-CV-04025 (PAE) (KHP), 2020 WL 2765866, at *3 (S.D.N.Y. May 28, 2020) (describing an approximately 2000-page administrative transcript as “quite lengthy” and “hardly typical,” which helped justify an EAJA fee award for more than 70 hours of work).

Second, counsel’s briefing was thorough and persuasive. *See Vellone v. Kijakazi*, No. 20-CV-261 (RA) (KHP), 2022 WL 276842, at *3 (S.D.N.Y. Jan. 31, 2022) (noting that the length and quality of plaintiff’s briefing helped justify an EAJA fee award for 65 hours of work). To vindicate his client’s interests, counsel also filed not only briefs on the merits of Plaintiff’s claims in this Court, but also supplemental briefs and letters in opposition to the SSA’s cross motion and requests for extensions of time, driving home the point that time was of the essence to his client as her financial situation worsened. *See generally* Pl. Mem. in Supp.; Pl. Reply; Pl. Mem. in Opp’n 1; Pl. Letter; Pl. Mem. in Opp’n 2. The Commissioner argues that there was significant overlap between (1) Plaintiff’s

briefing before this Court and the SSA Appeals Council and (2) Plaintiff’s opening brief and reply brief on her motion for judgment on the pleadings. Comm’r Mem. in Opp’n to EAJA Fee Mot. (“Comm’r Mem in Opp’n”) 6–9, ECF No. 27 (May 22, 2024). While the Commissioner directs the Court to certain sections and pages that do appear to be duplicative, the Commissioner also acknowledges that counsel’s filing before the Appeals Council was an “eight-page, single-spaced” brief. *Id.* at 8. Plaintiff’s opening brief before this Court was thirty double-spaced pages and included citations and significant analysis absent from the brief before the Appeals Council. Further, as to counsel’s reply brief, “a good reply brief ... needs to reorient the court by reiterating a few of the most important principles, and for the most part, that is what plaintiff did here.” *Collins v. Comm’r of Soc. Sec.*, No. 20-CV-4693 (BMC), 2021 WL 4947108, at *2 (E.D.N.Y. Oct. 25, 2021).

*5 Third, and most importantly, counsel was responsive to his client and, ultimately, highly effective in his advocacy. Despite his best efforts at negotiating a stipulated remand, counsel litigated this case through to a final judgment on the pleadings and prevailed on the merits. Courts routinely award fees comparable to what counsel has requested here for advocacy that culminates in voluntary or stipulated remands. *See Walker*, 2022 WL 4079576, at *1 (awarding a total of \$14,339 in EAJA fees where the case culminated in a stipulated reversal and remand). Counsel also actively communicated the dire need situation of his client, convincing the Court to order an expedited hearing and decision on remand. This remand resulted in a Notice of Award for past due benefits to Plaintiff. In short, counsel achieved a complete success for Plaintiff, and further did so while she faced dire need and required an expedited decision to avoid the risk of homelessness.

Finally, Plaintiff has already agreed to a significant reduction in the EAJA fees sought here. Delott Decl. ¶¶ 36, 40 (indicating a reduction of approximately 20 percent from \$23,369.61, which would include the full 86.3 hours documented by counsel, to \$17,500). The reduction is actually even greater, because counsel documented that he expended additional time defending this motion for attorney’s fees under the EAJA. ECF No. 29-1 (documenting an additional 5.8 hours); *see also Walker*, 2022 WL 4079576, at *2 (citing *Comm’r, I.N.S. v. Jean*, 496 U.S. 154, 166, 110 S.Ct. 2316, 110 L.Ed.2d 134 (1990)) (“[A]n application for EAJA fees may properly include the time spent preparing and defending the fee motion”). This self-imposed reduction is already more than courts in this district have imposed in comparable cases. *See Collins*, 2021 WL 4947108, at *2 (reducing the

hours compensable under the EAJA from 60 to 53, a reduction of approximately 12 percent). Other courts have refused to reduce EAJA fee requests when presented with arguments almost identical to the Commissioner's. *Walker*, 2022 WL 4079576, at *1–2 (declining to reduce an EAJA fee request for 65.5 attorney hours when defendant cited “counsel’s representation of Plaintiff at the administrative level, his substantial experience as a Social Security disability attorney, the lack of a reply brief, and the lack of ‘difficult or complex legal or factual issues’ ”).

For these reasons, the Court grants Plaintiff’s motion for attorney’s fees under the EAJA.

II. Motion for Attorney’s Fees Pursuant to [Section 406\(b\)](#)

The Social Security Act provides that “[w]henver a court renders a judgment favorable to a claimant under this subchapter ... the court may determine and allow as part of its judgment a reasonable fee ... not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled” 42 U.S.C. § 406(b)(1)(A). Though a motion for attorney’s fees under [section 406\(b\)](#) is filed under Plaintiff’s name, counsel is the true party in interest. *Gisbrecht v. Barnhart*, 535 U.S. 789, 798 n.6, 122 S.Ct. 1817, 152 L.Ed.2d 996 (2002). [Section 406\(b\)](#) permits contingency fee arrangements, provided they represent “a reasonable fee.” *Wells v. Sullivan*, 907 F.2d 367, 369 (2d Cir. 1990).

As an initial matter, an application for fees must be timely within the 14-day time limit laid down in *Fed. R. Civ. P. 54(d)(2)(B)*. *Sinkler v. Berryhill*, 932 F.3d 83, 87–88 (2d Cir. 2019). Though the Notice of Award is dated April 20, 2024, and the 406(b) fee motion was not filed until May 29, 2024, counsel has explained that he did not receive the Notice of Award until May 29 and has sufficiently documented his office’s diligent attempts to obtain a copy of the Notice of Award prior to receiving it. In filing the 406(b) fee motion on May 29, counsel acted expeditiously upon his belated receipt of the Notice of Award. The Court finds these circumstances justify tolling the 14-day time limit for 406(b) fee motions. *See Sinkler*, 932 F.3d at 89 (“District courts are empowered to enlarge [the *Fed. R. Civ. P. 54(d)(2)(B)*] filing period where circumstances warrant.”).

*6 Second, the Court must confirm that the fee authorization does not exceed 25 percent of the total past due benefits obtained by the claimant. Here, the \$32,397.18 fee authorization requested by counsel is

identical to the 25 percent withholding indicated by the Notice of Award. *Compare* Pl. Mem. in Supp. of 406(b) Fee Mot. 3, ECF No. 31 (May 29, 2024) (requesting \$32,397.18 in fees), *with* Notice of Award at 5 (indicating amount withheld for possible fee authorization). Moreover, counsel affirmatively indicates, pursuant to law and his Agreement with Plaintiff, “[i]f an attorney receives § 406(b) fees, the EAJA fees get turned over to the claimant. Therefore, the EAJA fees being sought here are actually for [Plaintiff] and will be turned over to her after [counsel] receive fees pursuant to § 406(b).” Delott Decl. ¶ 39. This refund reduces his total fees below 25 percent of total past due benefits. Accordingly, counsel’s request comports with this facet of [section 406\(b\)](#).

This Court must next evaluate whether counsel’s requested fee authorization is reasonable. The Second Circuit instructs “that courts should ‘approach fee determinations by looking first to the contingent-fee agreement, then testing it for reasonableness.’ ” *Fields v. Kijakazi*, 24 F.4th 845, 853 (2d Cir. 2022) (quoting *Gisbrecht*, 535 U.S. at 808, 122 S.Ct. 1817). A reasonableness determination must consider (1) “the character of the representation and the results the representative achieved”; (2) whether “the attorney is responsible for delay, lest the attorney profit from the accumulation of benefits during a delay that the attorney caused”; (3) “whether there has been fraud or overreaching in making the contingency agreement”; and (4) whether “the benefits are large in comparison to the amount of time counsel spent on the case — the so-called ‘windfall’ factor ... articulated in [*Wells*, 907 F.2d at 372].” *Fields*, 24 F.4th at 853 (citing *Gisbrecht*, 535 U.S. at 808, 122 S.Ct. 1817) (citation modified).

While the first two factors are “straightforward,” the “windfall” factor is “less clear.” *Id.* “Courts must consider more than the de facto hourly rate.” *Id.* at 854. In evaluating whether a fee award constitutes a windfall, courts look to (1) “the ability and expertise of the lawyers and whether they were particularly efficient”; (2) “the nature and length of the professional relationship with the claimant — including any representation at the agency level”; (3) “the satisfaction of the disabled claimant”; and (4) “how uncertain it was that the case would result in an award of benefits and the effort it took to achieve that result.” *Id.* at 854–56.

Applying these factors to the instant case, the Court finds that counsel’s requested fee authorization is plainly reasonable. First, counsel dedicated 92.1 hours of work to Plaintiff’s case before this Court. Dividing counsel’s requested \$32,397.18 fee authorization by these expended hours indicates counsel would receive a *de facto* hourly

rate of \$351.76. This rate is significantly below “the range of effective hourly rates that have previously been deemed reasonable by courts in this Circuit.” *Dorta v. Saul*, No. 18-CV-396 (JLC), 2021 WL 776446, at *2 (S.D.N.Y. Mar. 1, 2021) (citations omitted); *see also Gentile v. Kijakazi*, No. 21-CV-641 (AMD), 2023 WL 6392905, at *2 (E.D.N.Y. May 3, 2023) (collecting cases approving *de facto* hourly rates between \$1,072.17 and \$2,100 while finding an hourly rate of \$1,750 to be reasonable); *Rubalskaya v. Comm’r of Soc. Sec.*, No. 23-CV-4625 (AMD), 2025 WL 2074177, at *2 (E.D.N.Y. July 23, 2025) (approving a *de facto* hourly rate of \$979.70); *Hidalgo v. Comm’r of Soc. Sec. Admin.*, No. 20-CV-1271 (RPK), 2025 WL 1384246, at *2 (E.D.N.Y. May 13, 2025) (finding that a *de facto* hourly rate of \$2,665.73 constituted a windfall where the attorney only expended 2.9 hours on the case before reducing the hourly rate to \$1,500).

A review of the record also indicates that the requested fee authorization is reasonable. The Court has already reviewed counsel’s meritorious representation of Plaintiff *supra* and here briefly analyzes counsel’s representation under the framework outlined in *Gisbrecht* and *Fields*.

*7 The Agreement entered into by Plaintiff and counsel expressly provides for counsel to seek a 25 percent [Section 406\(b\)](#) fee. Counsel’s representation of Plaintiff was competent, and Plaintiff prevailed in full, including remand to the agency and, ultimately, an award of full past due benefits. There is no indication that Plaintiff’s counsel engaged in dilatory tactics to delay the litigation and enlarge the fee award; to the contrary, the record indicates counsel acted quickly to expedite the litigation when his client was suffering dire financial straits. Counsel reviewed a voluminous administrative record, submitted multiple briefs, and frequently conferred with counsel for the SSA. Though counsel only represented Plaintiff before the Court for approximately a year and half, it is clear his firm achieved an excellent result for Plaintiff, prevailing first in his efforts to reverse and remand the initial adverse SSA decision before prevailing again on the merits before the agency and securing substantial past due benefits for Plaintiff. Counsel acted expeditiously through the litigation, avoiding undue delay, and there is no allegation of fraud or overreach. Moreover, the Agreement executed by counsel and Plaintiff appears to be standard for practitioners in this area of the law.

Finally, counsel’s requested fee authorization does not represent a windfall. Counsel is a disability law expert who litigated this case with appropriate efficiency; counsel also represented Plaintiff before the agency; Plaintiff has been fully satisfied through this litigation and in proceedings before the agency, resulting in, first, remand and, ultimately, an award of past due benefits; and this matter was forcefully argued by both parties before this Court, indicating that this outcome was far from certain.

Nor does this Court see any other reason to reduce counsel’s fee below what Plaintiff consented to at the outset of this litigation. Fee authorizations under [section 406\(b\)](#) serve the important end of encouraging attorneys to accept social security cases on a contingent basis, representing claimants who may otherwise struggle to find attorneys.

For all of the foregoing reasons, this Court grants Plaintiff’s motion for fees under [section 406\(b\)](#).

CONCLUSION

Accordingly, Plaintiff’s motion for attorney’s fees under the EAJA is GRANTED. The Court orders that Plaintiff is awarded \$17,500 in attorney fees and expenses pursuant to the EAJA, [28 U.S.C. § 2412\(d\)](#). Likewise, Plaintiff’s motion for attorney’s fees under [42 U.S.C. § 406\(b\)](#) is GRANTED. The Commissioner is directed to release to Plaintiff’s counsel the \$32,397.18 withheld from Plaintiff’s past due benefits, in accordance with agency policy. Plaintiff’s counsel is directed, upon receipt of both the EAJA fees and the 406(b) fees, to promptly refund to Plaintiff the \$17,500 fee amount awarded under the EAJA. This case will remain closed.

SO ORDERED.

All Citations

--- F.Supp.3d ----, 2025 WL 2482318

