

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:

ALEXANDER COURTNEY FOSTER,

Debtor.

CASE NO. 06-68298-CRM

CHAPTER 13

JUDGE MULLINS

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**ORDER**

**THIS MATTER** is before the Court on the Objection to Confirmation and Request for Dismissal of Case (the "Objection") (Doc. No. 13). Alexander Courtney Foster (the "Debtor") filed a petition for relief under Chapter 13 of the Bankruptcy Code on July 14, 2006. Debtor filed a Plan that same day (Doc. No. 2) which was amended on October 16, 2006 (the "Amended Plan", Doc. No. 24). The Chapter 13 Trustee (the "Trustee") filed the Objection on August 23, 2006. A hearing was held on the Objection on September 26, 2006. Parties filed post-hearing briefs.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, as well as Rule 1070-1 of the Local Rules of Practice for the United States Bankruptcy Court for the Northern District of Georgia. This is a core proceeding under 28 U.S.C. § 157(b)(2)(L).

The issue before the Court is whether the Debtor is required to pay his disposable income to unsecured creditors according to his B22C Form, the Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, or the projected disposable income as set forth in 11 U.S.C. § 1325(b)(1)(B), which is provided in Schedule J. Debtor is a single, 35-year-old male, with no dependents, who is employed as a network engineer with ACS State Healthcare, LLC ("ACS"). Debtor started his job at ACS approximately two months prior to the filing of his petition. According to Debtor's amended B22C Form (the "Amended B22C

Form”, Doc. No. 16), Debtor’s current monthly income (“CMI”) for the 6-month period preceding the date of commencement of the case is \$3,123.00 (line #20) and his annualized CMI is \$37,476.00 (line #21). Because Debtor’s annualized income of \$37,467.00 exceeds the median income for a household of one in the state of Georgia, Debtor’s applicable commitment period is sixty months. Debtor’s expenses are calculated in accordance with 11 U.S.C. § 707(b). The Debtor anticipates general unsecured claims totaling \$11,895.00. Debtor’s Amended B22C Form reflects that Debtor’s monthly disposable income (“MDI”) is a negative \$525.29 (line #58). Thus, according to the Amended B22C Form, Debtor’s unsecured creditors would receive a dividend of 0% of their allowed claims. Debtor obtained employment with ACS during the latter third of the six-month, look-back period. Therefore, his actual monthly income, post-petition, is greater than the CMI reflected and applied in his Amended B22C Form. Debtor’s amended Schedule I (Doc. No. 18) reflects monthly gross income of \$6,419.00 and net income of \$4,829.00. An amended B22C Form reflecting this present, actual income as his CMI would create an amended MDI requiring a 100% dividend to allowed, general, unsecured claims.

The Chapter 13 Trustee objects to confirmation of the Amended Plan because the Debtor’s Plan proposes to contribute zero dollars to his general unsecured creditors even though his actual income and expenses as reflected on Schedules I and J show that the Debtor could afford to pay his general unsecured creditors a dividend greater than zero dollars. Based on Debtor’s actual income at the time of filing, the Chapter 13 Trustee asserts that the Debtor could afford to pay his general unsecured creditors in full based on the actual income as reflected on Schedule I and allowed expenses set forth in 11 U.S.C. § 707(b)(2).

In April 2005, Congress enacted “The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005” (hereinafter, “BAPCPA”), with a majority of the provisions effective as of October 17, 2005. BAPCPA established what is referred to as the “Means Test” which is

set out in sections 707(b)(2)(A & B), and incorporated into Chapter 13 by section 1325(b)(3) of the Bankruptcy Code. The Judicial Conference of the United States adopted interim rules and forms, including Form B22C. Form B22C codifies sections 707(b)(2)(A & B) and section 1325(B)(3) into a table form and is used to calculate a debtor's current monthly income, applicable commitment period, and disposable income. The CMI on Line 2 of Form B22C is defined as "the average monthly income from all sources that the debtor receives without regard to whether such income is taxable income, derived during the 6-month period....immediately preceding the date of the commencement of the case." 11 U.S.C. § 101(10A) (emphasis added). The Debtor must calculate the amount of disposable income on this form by deducting the Debtors' current monthly income from expenses "established by the IRS National Standards and local Standards for the area in which the debtor resides." E.g., In re Grady, 343 B.R. 747, 749 (Bankr. N.D. Ga. 2006) (citing In re Walker, 2006 Bankr. LEXIS 845, \*5 (Bankr. N.D. Ga. 2006) (Drake, J.)). See also In re Fuller, 346 B.R. 472, 485 (Bankr. S.D. Ill. 2006) (finding that "for an above-median income debtor, the allowed expense deductions for purposes of calculating "projected disposable income" should, in fact, be those expenses deducted on Form B22C--not the actual expected expenses listed on Schedule J").

Various courts have explored Congress's use of the phrase "disposable income" under section 1325(b)(2) and the use of the phrase "projected disposable income" under section 1325(b)(1)(B). While there have been different views regarding this issue, many courts have found that, while the Form B22C calculation is important for plan confirmation, its disposable income calculation is "merely a starting point, and not a determinative number." In re McGuire, 342 B.R. 608, 615 (Bankr. W.D. Mo. 2006). See also In re Barraza, 346 B.R. 724 (Bankr. N.D. Tex. 2006); In re Gress, 344 B.R. 919 (Bankr. W.D. Mo. 2006); In re Jass, 340 B.R. 411 (Bankr. D. Utah 2006); In re Hardacre, 338 B.R. 718 (Bankr. N.D. Tex. 2006). Other courts, however,

have held that "projected disposable income" should be based exclusively upon the calculation of "disposable income" as reflected on Form B22C. These courts state that the Means Test was "designed to make the determination for [above-median] debtors 'formulaic'." E.g., In re Farrar-Johnson, 353 B.R. 224, 228 (Bankr. N.D. Ill. 2006) (citation omitted). See also In re Alexander, 344 B.R. 742 (Bankr. E.D.N.C. 2006). Recently decided cases support a "forward-looking" approach to calculating disposable income. E.g., In re Watson, 2007 Bankr. LEXIS 1261, \*17 (Bankr. D. Md. April 11, 2007) (discussing concerns that a "rigid approach" to calculating debtor's disposable income could result in a debtor that "enjoys a higher level of income postpetition (as compared to the six month historical CMI calculation) may be required to pay less into the plan than would be required if the court were able to consider current income and expenses reflected on Schedules I and J"); In re Kibbe, --- B.R. 2007 ---, 2007 WL 512753, \*22-23 (1st Cir. BAP, Feb. 20, 2007) (affirming a bankruptcy court order concluding that "projected disposable income", as the term is employed in section 1325(b)(1)(B) of the Bankruptcy Code, should be determined according to the income and expenses represented on Schedules I and J, rather than by the outcome of Form B22C).

In a previous Chapter 13 case involving a change in financial circumstances arising around the time of filing, this Court stated that "[t]he significance of the word "projected" is that it requires the Court to consider both future and historical finances of a debtor in determining compliance with section 1325(b)(1)(B)." In re Grady, 343 B.R. at 751 (citation omitted). The debtors in Grady filed their Form B22C reflecting current monthly income of \$7,368.28, indicating that they were above the median income for their family size in Georgia. Because their gross income was greater than the median income, the debtors were required to complete Parts III, IV, and V of Form B22C entitled "Determination of Disposable Income." The end result was monthly disposable income of \$1,192.28. The Trustee objected to confirmation of

the debtors' plan because it proposed to pay 7% to general unsecured creditors rather than 100% dictated by Form B22C. The debtors argued that there was a change in circumstances that arose near around the time that the debtors filed their case preventing them from paying their general unsecured creditors in full at 100% as required by Form B22C. Specifically, Mrs. Grady, one of the debtors, had developed a heart condition which prevented her from working resulting in the debtors relying solely on Mr. Grady, the other debtor, to provide the income for the household. Stating that Congress intended that debtors propose a monthly payment to unsecured creditors based on their financial situation at the time of confirmation, the Court evaluated the debtor's financial circumstances as to whether they were paying a sufficient amount of disposable income to unsecured creditors from a flexible and forward-looking perspective. *Id.* at 752. This Court concluded that the debtors had suffered from a change in circumstances that resulted in a significant decrease in income and authorized them to pay the projected disposable income under Schedule J as opposed to the disposable income on Form B22C. *Id.* at 752-53.

The Court's ruling in Grady logically extends to the factual situation of the case at bar. While Grady involved a situation where a change in circumstances resulted in the debtors having less disposable income to pay unsecured creditors at the time of confirmation as compared to the six months preceding the petition date, the case at bar concerns the opposite situation, where a change in circumstances creates more income for unsecured creditors at the time of confirmation than established by the six-month look back period. In both situations, debtor's future disposable income is not commensurate with the disposable income debtor received for the six months before filing. The recent case of In re Riggs, 2007 Bankr. LEXIS 542 (Bankr. D. Ky. Feb. 27, 2007) has facts similar to the case at bar. In Riggs, debtors filed schedules showing a difference between their income and expenses of \$882. The debtors' B22C Form showed annualized income of \$71,524. Their total deductions were \$6,230, resulting in

negative monthly income of \$270. (The debtors later amended their Form B22C which resulted in monthly disposable income of \$18.) Reiterating the interpretation shared by this Court, the Riggs court stated that “Congress must have intended ‘projected disposable income’ to be different from ‘disposable income.’” 2007 Bankr. LEXIS at \*7 (citing In re Hardacre, 338 B.R. at 723). The Riggs court held that a Chapter 13 debtor’s “projected disposable income”, as employed in 1325(b)(1)(B), should be determined by reference to the debtor’s Schedules I and J finding that strict reliance on Form B22C results in an interpretation that “[skews] the debtor’s disposable income based on the six month period immediately prior to filing and [allows] a degree of manipulation of the system which seems unlikely to have been intended by Congress.” Id. at \*6. Accordingly,

**IT IS ORDERED** that the Chapter 13 Trustee’s Objection to Confirmation be and is hereby **SUSTAINED**.

**IT IS FURTHER ORDERED** that Debtor submit an amended Chapter 13 Plan within 15 days of entry of this order providing for payment of general unsecured creditors based on Schedules I and J.

**IT IS SO ORDERED**, this 7 day of May, 200~~6~~<sup>7</sup>.



C. RAY MULLINS  
UNITED STATES BANKRUPTCY JUDGE