



IT IS ORDERED as set forth below:

Date: May 12, 2010

A handwritten signature in black ink, reading "Paul W. Bonapfel", is written over a horizontal line.

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

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|--------------------------------|---|------------------------------|
| IN RE: | : | Chapter 13 |
| | : | |
| DARLENE ELIZABETH ROSE, | : | Case No. 09-70088-pwb |
| | : | |
| Debtor. | : | |
| | : | |

O R D E R

The sole issue before the Court with regard to confirmation of the Debtor's Chapter 13 plan is whether unemployment compensation payments are "benefits received under the Social Security Act" such that they are excluded from "current monthly income" under 11 U.S.C. § 101(10A)(B).

Under 11 U.S.C. § 1325(b)(1), the Court cannot confirm a debtor's plan, if the Chapter 13 trustee or an unsecured creditor objects to it, unless the plan provides that all of the debtor's projected disposable income to be received in the "applicable commitment period" will be applied to make payments to unsecured creditors, unless the plan provides for full payment of claims. The "applicable commitment period" is five years if the debtor's annualized current monthly income

exceeds the median income in her state for a household of her size, 11 U.S.C. § 1325(b)(4)(A)(ii), and three years if it is less than the applicable median family income. 11 U.S.C. § 1325(b)(4)(A)(i).

The Debtor's plan in this case provides for payment of projected disposable income for only 36 months because she excludes unemployment compensation benefits from the computation of her "current monthly income." The Chapter 13 Trustee contends that the Debtor must include unemployment compensation benefits in calculating current monthly income. The parties agree that, if the benefits are included, the Debtor's current monthly income exceeds the applicable median and, therefore, the Court cannot confirm her plan. Conversely, if the benefits are excluded, the Debtor's plan is confirmable because it meets the confirmation requirements of 11 U.S.C. § 1325(a) and satisfies the projected disposable income test of 11 U.S.C. § 1325(b).

Sound arguments support the propositions that "current monthly income" does¹ or does not² include unemployment compensation benefits. The Court has carefully studied the briefs the Debtor and the Chapter 13 Trustee submitted and the authorities cited therein. The courts in the cases cited in the footnotes below extensively and cogently marshal the competing arguments, and the Court need not repeat those arguments here.

The better view is that "current monthly income" includes unemployment compensation benefits.³ Because the Court concludes that "current monthly income" includes an unemployment

¹E.g., *In Re Kucharz*, 418 B.R. 635 (Bankr. C.D. Ill. 2009); *DeHart v. Baden (In re Baden)*, 396 B.R. 617 (Bankr. M.D. Pa. 2008); Eugene R. Wedoff, *Means Testing in the New § 707(b)*, 79 AM. BANKR. L. J. 231, 247 (Spring 2005).

²E.g., *In re Munger*, 370 B.R. 21 (Bankr. D. Mass. 2007); *In re Sorrell*, 359 B.R. 167 (Bankr. S.D. Ohio 2007); 2 COLLIER ON BANKRUPTCY ¶101.10A at 101-77 (16th ed.).

³In this regard, the Court makes the following observation. This Court's task is to interpret the law in the way that the Court thinks Congress intended. The determinative factor for this Court

compensation benefit, the Court denies confirmation of the Debtor's plan. The Debtor shall have 30 days from the date of entry of this Order to file a new plan or to modify the existing one to propose terms that meet the requirements for payment of projected disposable income in accordance with this determination.

[End of Order]

[Not intended for publication]

is the Court's view that Congress most likely used the term, "benefits received under the Social Security Act," in the same way that people ordinarily think of "Social Security benefits." In this Court's judgment, people generally think of "Social Security benefits," as referring to retirement, disability, and other payments that come through the program that is administered by the Social Security Administration and that is called "Social Security;" people usually do not think of unemployment benefits that are administered by a State agency as being a "Social Security benefit" or as being a part of "Social Security." This Court's assessment is that Congress used the term in this ordinary sense.