



IT IS ORDERED as set forth below:

Date: September 11, 2012

**W. Homer Drake
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBER
	:	
PAMELA NICOLE MACK,	:	12-10594-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtor.	:	BANKRUPTCY CODE

O R D E R

Before the Court is the issue of confirmation of a Chapter 13 plan proposed by Pamela Nicole Mack (hereinafter “Debtor”). Adam M. Goodman, Chapter 13 Trustee, (hereinafter “Trustee”) has objected to confirmation and also seeks dismissal of the case. The Court held the confirmation hearing on June 28, 2012, at which time the matter was taken under advisement. This matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(L); § 1334.

FINDINGS OF FACT

On March 1, 2012, the Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code. She also filed her Official Form 22C, which states her current monthly income ("CMI"), calculates her applicable commitment period ("ACP), and determines her projected disposable income ("PDI).

The Debtor is married, but her spouse did not join in her petition. On Part I of Form 22C, the Debtor disclosed her gross monthly income received during the six-month period preceding the filing of this case as \$2,026.00 and that of her non-filing spouse's as \$3,918.00. On Line 13, for purposes of determining her ACP, Debtor deducted her spouse's monthly payroll tax withholdings of \$624 and 401(k) contributions of \$117. The Debtor took the same deduction on Line 19 to determine her PDI in accordance with section 1325(b)(3).

As a result of the Line 13 deduction, the Debtor's annualized CMI was \$62,436¹, an amount less than the median family income in Georgia of \$64,223 for a household of four. Consequently, the Debtor's ACP is 36 months, pursuant to section 1325(b)(4). In accordance with her Form 22C, the Debtor's plan proposes payments of \$525 per month, a thirty-six month ACP, and \$6,000 to be shared pro rata among those holding allowed unsecured claims.

CONCLUSIONS OF LAW

The Trustee objects to confirmation and moves for dismissal of the case. First, he

¹ Debtor calculated this annualized CMI by using all of Debtor's spouse's take home income as contributed "on a regular basis for the household expenses of the debtor or the debtor's dependents..." although Debtor need only calculate the amount *actually* contributed toward those expenses by an entity other than herself. *See infra*.

contends that, as a matter of law, the marital adjustment is not permitted in determining the ACP, therefore, the Debtor must propose a plan with an ACP of sixty months. 11 U.S.C. § 1325(b)(4). Second, even if a marital adjustment is permitted, the Trustee argues the adjustments claimed in this case are impermissible because the funds being excluded are eventually contributed to the Debtor's support.

Section 1325(b)(1) provides that, if the trustee or an unsecured creditor objects to confirmation of the debtor's proposed plan, the court may not approve the plan unless, as of the effective date, the plan either pays all claims in full or provides for payment of "all or the debtor's projected disposable income to be received in the" ACP to unsecured creditors. 11 U.S.C § 1325(b)(1). The ACP is determined by section 1325(b)(4), and its length depends upon whether the debtor's income is above or below a particular median income. Specifically, if the debtor's income is below the median income for her household size, her ACP will be thirty-six months, and if not, it must be sixty months.

The question before the Court is how to calculate the income of a married debtor with a non-debtor spouse for purposes of determining the ACP. Under section 1325(b)(4), the ACP is a function of comparing "the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12," to the applicable median income. Here, there is no dispute that the applicable median income is \$64,223.

Accordingly, as "current monthly income" is a defined term, the Court must look to section 101(10A) to determine the Debtor's CMI for this purpose. Section 101(10A) defines "current monthly income" as "the average monthly income from all sources that the debtor

receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period" prior to the filing of the debtor's petition "and includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a *regular basis* for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent). . . ." 11 U.S.C. § 101(10A) (emphasis added). When the debtor is married, but the debtor's spouse has not also filed a bankruptcy petition, the debtor's CMI is, therefore, all income received by the debtor from any source plus any amounts "paid by" the debtor's spouse "on a regular basis for the household expenses of the debtor or the debtor's dependents."

Section 1325(b)(4) then requires the Court to "combine" the Debtor's CMI and the CMI of the Debtor's spouse to determine the correct amount to measure against the applicable median income. Because the definition of CMI includes income that the "debtor" receives and because a non-filing spouse is not a debtor as defined by the Bankruptcy Code,² a debtor's non-filing spouse does not have "current monthly income." The majority view holds that the amount from the non-filing spouse's gross income that is added to the Debtor's CMI under section 1325(b)(4) is zero. *See In re Green*, 28 WL 7880899, 3 (Bankr. N.D. Ga. Nov. 10, 2008) (Massey, J.) (citing *In re Quarterman*, 342 B.R. 647 (Bankr. M.D. Fla. 2006); *In re Barnes*, 378 B.R. 774, 778 (Bankr. S.C. 2007); *In re Charles*, 375 B.R. 338, 342

² "The term 'debtor' means person or municipality concerning which a case under this title has been commenced." 11 U.S.C. § 101(13).

(Bankr. E.D. Tex. 2007); *In re Shahan*, 367 B.R. 732, 736-37 (Bankr. D.Kan. 2007); *In re Hall*, 2007 WL 445517, 3 (Bankr. C.D. Ill. 2007); *In re Grubbs*, 2007 WL 4418146 (Bankr. E.D. Va. 2007)); *but see In re Ariyaserbsiri*, 2008 WL 5191200 (Bankr. E.D. Tex. 2008).

This Court agrees with and adopts the majority view on this point. Accordingly, a marital adjustment for purposes of determining is permissible.

Furthermore, the Court finds the Trustee's position untenable. The Trustee urges the Court to adopt the standard developed in *In re Ariyaserbsiri*, which included the full gross income of the non-filing spouse into the ACP determination under section 1325(b)(4). *In re Ariyaserbsiri*, 2008 WL 5191200 (Bankr. E.D. Tex. 2008). By accepting this position, the Court would have to disregard the defined term of "current monthly income" as to the non-filing spouse. "As a rule [of construction], '[a] definition which declares what a term means . . . excludes any meaning that is not stated.'" *Colautti v. Franklin*, 439 U.S. 379, 393 (1979) (internal quotations omitted); *see also In re Green*, 28 WL 7880899, 4 (Bankr. N.D. Ga. Nov. 10, 2008) (Massey, J.) ("Where a statute defines a term applicable throughout the statute, courts have 'no license' to ignore such a direction.").

Even if the Court entertained the proposition asserted in *Ariyaserbsiri*, a problem arises. *Ariyaserbsiri* added the full gross income of the non-filing spouse to the Debtor's CMI to determine ACP under section 1325(b)(4). However, the definition of CMI already includes "any amount paid by any entity" (which includes Debtor's spouse) on a regular basis toward the household expense of the debtor and the debtor's dependents. 11 U.S.C. § 101(10A). Assuming the Debtor includes an amount contributed by her spouse towards the

calculation of her own CMI, a requirement to substitute in section 1325(b)(4) the non-filing spouse's CMI with "full gross income" as suggested by the *Ariyaserbsiri* court runs the risk of a duplicate assessment of the non-filing spouse's regular contributions toward the household expenses of the Debtor or Debtor's dependents. The Court finds this analysis difficult to accept.

For ease of calculation, the Official Form 22C requires the debtor to include her income and the income of her spouse and then "adjust" the figure by deducting the amounts not contributed by the non-filing spouse to the debtor's household expenses in order to arrive at the amount considered available for payment of the debtor's household expenses and debts. This "deduction" is referred to as the "marital adjustment," but it is more accurately considered to be an exclusion from the debtor's CMI.

The Trustee contends that the Debtor should not be permitted to exclude the \$624 per month withheld from her spouse's wages for federal and state taxes and his contribution of \$117 per month to a retirement account from the amounts considered to be "paid" by the Debtor's spouse for her household expenses. In support of his objection, the Trustee contends that, based on past tax refunds received by the Debtor and her spouse, the withheld funds will eventually come back into the household when the Debtor and her spouse receive a joint tax refund, and the amounts paid into the spouse's retirement account will eventually benefit the Debtor when the funds are withdrawn. First, the Trustee assumes that these funds are being withdrawn to pay for the "household expenses of the debtor or the debtor's dependents." *See* 11 U.S.C. § 101(10A). Even assuming this is true as a matter of fact, it is

clear that the funds would be used for support only at that later time. They simply are not "paid on a regular basis" for the support of the Debtor and her dependents, as they do not enter the household income stream on a regular basis. *Id.*; *see also e.g. In re Vollen*, 426 B.R. 359, 374 (Bankr. D. Kan. 2007) (tax withholding is an allowable exclusion from CMI as these amounts do not enter the household income stream and are, therefore, not available for payment of regular household expenses).

Further, the question is not whether the Debtor's spouse has allowable postpetition expenses that may be deducted from the Debtor's CMI, but rather how much of the spouse's income should be included within the Debtor's CMI. The Debtor's CMI is intended to measure income received during a specific 6-month period preceding the petition date. Considering income that is only available to the Debtor at some time after the petition date would be inconsistent with measuring the Debtor's income received during the 6 months prior to the filing. *See, e.g., In re Coverstone*, 461 B.R. 629 (Bankr. D. Idaho 2011) (although the court could consider debtor's daughter's payment of household expenses under the "forward-looking approach" to calculating "projected disposable income," the court would not consider those payments when calculating the debtor's "current monthly income" because the daughter only began making the payments after the petition was filed). For these reasons, the Court finds that the marital adjustment proposed by the Debtor is appropriate.

For the reasons stated above, the Court finds that the Debtor's plan provides for the correct ACP. Accordingly, the Trustee's objection to confirmation is overruled and his Motion to Dismiss is **DENIED**.

The Trustee shall report to the Court on or before **September 28, 2012** as to whether the Debtor's plan is otherwise confirmable. If the Trustee reports that the plan is confirmable, the Court will enter the confirmation order without further hearing. If not, the Court will schedule a further confirmation hearing.

END OF DOCUMENT