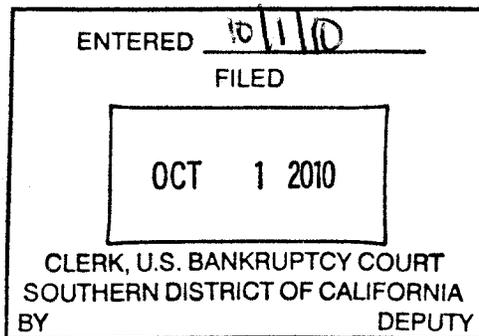


WRITTEN DECISION - NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

11	In re)	Case No. 09-07972-JM13
)	
12	ROSEMARY DURAN,)	ORDER ON CHAPTER 13
)	TRUSTEE'S OBJECTION
13	Debtor.)	TO CONFIRMATION OF
)	PLAN
14)	

15 Mrs. Duran resides in her home and her adult daughter
 16 Catherine lives with her, along with Catherine's three minor
 17 children. Catherine has contributed \$1,200 per month to
 18 Mrs. Duran to help defray family expenses. The Chapter 13
 19 Trustee has contended that non-debtor persons residing with a
 20 debtor should be required to disclose all their income, not just
 21 what they choose to contribute, and that such income should be
 22 included in the calculation of disposable income on Form B22C.

23 The Court has subject matter jurisdiction over this
 24 proceeding pursuant to 28 U.S.C. § 1334 and General Order
 25 No. 312-D of the United States District Court for the Southern

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1 District of California. This is a core proceeding under
2 28 U.S.C. § 157(b)(2)(A), (O).

3
4 Discussion

5 At the time of the hearing on this matter there was argument
6 on whom may be included in a "household" for purposes of
7 determining the size of a household. The importance of that
8 determination is that household size determines the applicable
9 median family income in the debtor's resident State which, in
10 turn, is used to determine disposable income, as well as the
11 applicable commitment period for a proposed Chapter 13 plan.

12 As courts have noted, Congress did not define what it meant
13 by the term "household". So some courts have turned to the
14 phrase "median family income", which is defined by statute as
15 "(A) the median family income both calculated and reported by
16 the Bureau of the Census . . ." 11 U.S.C. § 101 (39A). In re
17 Ellringer, 370 B.R. 905, 910 (Bankr. D. MN 2007); In re Epperson,
18 409 B.R. 506-07, (Bankr. D. AZ 2009). Those cases concluded that
19 anyone living in the household, related to the debtor or not,
20 should be counted as members of the household for purposes of
21 determining median family income. At the time of the Ellinger
22 decision, the Census Bureau used its Current Population Survey as
23 its source document, and included all individuals, related or
24 not. However, the Census Bureau now recommends its more recent
25 American Community Survey, which separates households into two
26 types, family and nonfamily households. That distinction may

1 change the outcome in cases like Ellringer and Epperson where the
2 occupants were not related "by birth, marriage or adoption". In
3 the present case, however, because Mrs. Duran is related to her
4 daughter and grandchildren, her's is clearly a family household
5 of 5 under the Census Bureau's American Community Survey. That
6 answers the question of household size.

7 That allows the Court to turn its attention to the central
8 contention of the Chapter 13 trustee, which is whether the non-
9 debtor daughter's entire income is required to be disclosed and
10 included in the debtor's income calculation. The debtor takes
11 the contrary view and argues that the funds the daughter pays
12 monthly to the debtor to help defray expenses are properly
13 identified on line 7 of Form B22C as an amount paid regularly for
14 the household expenses of the household. The Form B22C filed in
15 this case lists the daughter's historic contribution at \$1,200,
16 which was added to the debtor's income to determine her current
17 monthly income.

18 It appears that what the Chapter 13 trustee is attempting to
19 do is revise the means test and Form B22C to require treatment of
20 the income of all non-filing household members as if they are a
21 non-filing spouse. On Form B22C, if a debtor is married, and
22 even if the spouse is not a filing debtor, the spouse's income is
23 required to be disclosed on lines 1 - 10 and included in a
24 debtor's total income at line 11. Then, at line 13, there may be
25 adjustments from that joint income which might reduce it. But up

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1 to the point of "Marital Adjustment" at line 13, the full income
2 of both is treated as the reported income.

3 The trustee has argued that the daughter's income should
4 be treated the same way and while there would be no "Marital
5 Adjustment" at line 13, the debtor could claim adjustments at
6 line 57 for "special circumstances" under the stringent
7 requirements of that section. In effect, under its' rationale,
8 the trustee would require the income of all household members to
9 be treated as joint income with the debtor. The Court disagrees.

10 The Court is sensitive to circumstances such as an adult
11 child with income residing with a debtor while electing to
12 contribute little or nothing to the living expenses, perhaps
13 because the child is saving to get their own residence, or a
14 car, or whatever. The debtor could claim the child as a
15 household member for purposes of determining median family
16 income, while the child continues to bank his or her own income.
17 It is not unreasonable in the abstract, for the trustee to want
18 to look at the total income of all the household members to
19 determine whether all disposable income that should be available
20 to fund a Chapter 13 plan is committed to it. But trying to
21 accomplish that end by asking this court to rewrite the Means
22 Test and Form B22C is not the way to do it.

23 Congress defined "current monthly income", in relevant part,
24 to include "any amount paid by any entity other than the debtor
25 . . . on a regular basis for the household expenses of the debtor
26 or the debtor's dependents" 11 U.S.C. § 101 [10A (B)].

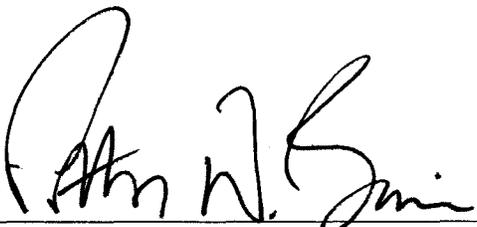
1 That is what line 7 of Form B22C calls for, and what this debtor
2 provided on her Form B22C. She has complied, and is not required
3 to list her daughter's full income either as a line 7
4 contribution or as a line 1 income similar to a non-filing
5 spouse.

6
7 Conclusion

8 For the foregoing reasons, the Chapter 13 trustee's
9 Objection to Confirmation of debtor's plan on the foregoing
10 grounds is overruled.

11 IT IS SO ORDERED.

12 DATED: OCT -1 2010

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15 PETER W. BOWIE, Chief Judge
16 United States Bankruptcy Court
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