

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:) No. 06-01195-PCW13
DAVID JOHN CASEY,) MEMORANDUM DECISION RE:
Debtor.) CONFIRMATION OF PLAN

10 | PATRICIA C. WILLIAMS, Presiding Judge

11 This case challenges the Court to define the role to be played
12 by the Statement of Current Monthly Income and Calculation of
13 Commitment Period and Disposable Income (Form B22C) in determining
14 whether a Chapter 13 debtor has proposed a plan which will pay all
15 projected disposable income as required by 11 U.S.C. § 1325(b)(1).
16 The challenge arose from the Trustee's objection to confirmation of
17 this debtor's proposed Chapter 13 plan.

18 The Bankruptcy Abuse Prevention and Consumer Protection Act of
19 2005 (hereinafter "BAPCPA") in 11 U.S.C. § 1325(b)(1) requires that
20 all "projected disposable income" be devoted to a plan for payment
21 of unsecured creditors. The word "projected" is an adjective which
22 modifies the term "disposable income," itself a defined term under
23 BAPCPA. That term is defined in § 1325(b)(2) which states that the
24 term ". . . means current monthly income received by the debtor
25 . . . less amounts reasonably necessary to be expended . . . for
26 the maintenance or support of the debtor or a dependent of the
27 debtor" Current monthly income is funds received within
28 six months of the commencement of the case, less certain types of

1 funds. 11 U.S.C. §§ 101(10) (A) and (10) (B). The determination of
2 which expenses are reasonably necessary is required to be made in
3 accordance with subparagraphs (A) and (B) of 11 U.S.C. § 707(b) (2).

4 11 U.S.C. § 707(b) (2) contains what is commonly referred to as
5 the "means test." That test calculates the debtor's monthly income
6 in a manner very different than the calculation performed prior to
7 BAPCPA. Historically, all funds received by a debtor at the time
8 of the commencement of the case were considered income, whether in
9 the form of wages, annual bonus, retirement pension payments, child
10 support or some other form. Under BAPCPA, not only is the prior
11 six months of income averaged, certain types of funds received are
12 not included as income. This debtor, prior to the enactment of
13 BAPCPA, would have been considered to receive significantly greater
14 income than after the enactment of BAPCPA. Calculated as required
15 by BAPCPA, the debtor's monthly income is \$4,965, and annual income
16 is \$59,580. Actual income received each month totals \$6,761, and
17 annual income totals \$81,132. Under either calculation, the debtor
18 is an above-median income debtor as that term is used in BAPCPA.
19 This dispute, however, does not involve questions arising on the
20 income side of the calculations necessary to determine disposable
21 income, but on the expense side.

22 As to above-median income debtors, the means test defines a
23 debtor's expenses based upon a formula found in 11 U.S.C.
24 § 707(b) (2) (A) (ii) (I).

25 The debtor's monthly expenses shall be the debtor's
26 applicable monthly expense amounts specified under the
27 National Standards and Local Standards, and the debtor's
28 actual monthly expenses for the categories specified as
Other Necessary Expenses issued by the Internal Revenue
Service for the area in which the debtor resides, as in
effect on the date of the order for relief, for the

1 debtor, the dependents of the debtor, and the spouse of
2 the debtor in a joint case, if the spouse is not
3 otherwise a dependent. Such expenses shall include
4 reasonably necessary health insurance, disability
5 insurance, and health savings account expenses for the
6 debtor, the spouse of the debtor, or the dependents of
7 the debtor. Notwithstanding any other provision of this
8 clause, the monthly expenses of the debtor shall not
9 include any payments for debts. In addition, the
10 debtor's monthly expenses shall include the debtor's
11 reasonably necessary expenses incurred to maintain the
12 safety of the debtor and the family of the debtor from
13 family violence as identified under section 309 of the
14 Family Violence Prevention and Services Act, or other
15 applicable Federal law. The expenses included in the
16 debtor's monthly expenses described in the preceding
17 sentence shall be kept confidential by the court. In
18 addition, if it is demonstrated that it is reasonable and
19 necessary, the debtor's monthly expenses may also include
20 an additional allowance for food and clothing of up to 5
21 percent of the food and clothing categories as specified
22 by the National Standards issued by the Internal Revenue
23 Service.

13 Subsequent subparts of § 707(b) further describe additional
14 expenses which may be considered and allow adjustment of certain
15 categories of the IRS expenses used in the formula. Bankruptcy
16 Rule 1007(b)(6) requires debtors to file a Form B22C, which is an
17 attempt to reduce the complicated provisions of § 707(b)(2) into a
18 question and answer format comprehensible to debtors. Bankruptcy
19 Rule 1007(b)(6) is necessary as the 2005 amendments to § 1325
20 require that determination of disposable income start with current
21 monthly income.

22 The Form B22C filed by this debtor calculates monthly expenses
23 of \$5,505.90, however the debtor's actual monthly expenses
24 according to Schedule J are \$4,780.32. In this District, it is
25 common that application of the Internal Revenue Service standards
26 required by the means test will result in expenses which are
27 greater than the actual expenses of debtors. The Trustee's
28 objection to confirmation is based primarily upon the argument that

1 by requiring unsecured creditors be paid "projected disposable
2 income" under § 1325(b)(1) rather than "disposable income"
3 referenced in (b)(2), Congress contemplated adjustments to the
4 expenses listed in Form B22C and the means test. Simply stated,
5 the Trustee argues that the actual expenses of the debtor should
6 play a role in the determination of "projected disposable income."

7 **1. What constitutes projected disposable income under**
8 **11 U.S.C. § 1325(b)(1)?**

9 Congress has defined the term "disposable income." Not all
10 disposable income must be devoted to payment of unsecured
11 creditors, but only the type of disposable income which falls
12 within the definition of "projected." The addition of the
13 adjective "projected" in § 1325(b)(4), requiring projected
14 disposable income be devoted to unsecured creditors, further
15 defines the type and nature of the disposable income considered for
16 confirmation. The word "projected" means to plan, figure, or
17 estimate for the future. *Webster's II New College Dictionary* 884
18 (1995). It is a forward-looking concept. It requires a court to
19 examine anticipated disposable income rather than historical
20 disposable income, estimated disposable income, or some other type
21 of disposable income.¹ The requirement to devote projected or
22 anticipated disposable income to unsecured creditors is a
23 recognition that Chapter 13 plans are in effect for some years and

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25 ¹There may be situations where a debtor's financial
26 circumstances changed during the six month period preceding
27 commencement of the case. If so, the Form B22C calculation of
28 income may not be a reliable indication of anticipated future
income. That situation does not exist in the current controversy,
and this opinion does not address any issues which might arise in
such a situation.

1 that the financial circumstances of individuals change. The time
2 of occurrence or extent of those changes may be known at the time
3 the case is filed, at the time of confirmation, or at some time
4 later in the case. To the extent the changes can be reasonably
5 anticipated at the time of confirmation, they must be considered as
6 they are "projected." The presence of expected or even known
7 changes of financial circumstances does not, however, modify the
8 calculation of disposable income under § 707(b). If no changes in
9 financial circumstances are reasonably anticipated at the time of
10 confirmation, the projected disposable income referenced in (b) (1)
11 will be the same as the disposable income referenced in (b) (2).

12 This Court is in agreement with the analysis of "projected
13 disposable income" required under § 1325(b) (1) as contained in
14 *In re Jass*, 340 B.R. 411 (Bankr. D. Utah 2006).

15 The Court believes that the language of § 1325(b) (1) (B)
16 is clear and unambiguous - section 1325(b) (1) (B)'s
17 requirement that a plan propose to pay "projected
disposable income" means that the number resulting from
18 Form B22C is a starting point for the Court's inquiry
only. Section 1325(b) (2) defines "disposable income" but
19 § 1325(b) (1) (B) requires that a debtor propose a plan
paying "projected disposable income." (emphasis added).
The Court must give meaning to the word "projected," as
it obviously has independent significance. The word
20 "projected" means "to calculate, estimate, or predict
(something in the future), based on the present data or
trends." Thus, the word "projected" is future-oriented.
By definition under § 1325(b) (2), the term "disposable
income" is oriented in historical numbers. By placing
the word "projected" next to "disposable income" in
21 § 1325(b) (1) (B), Congress modified the import of
"disposable income." The significance of the word
22 "projected" is that it requires the Court to consider
both future and historical finances of a debtor in
determining compliance with § 1325(b) (1) (B).

23 To require all debtors to propose plans paying the number
resulting from Form B22C would essentially ignore the
word "projected" and give meaning only to the term
24 "disposable income." The only way for the word
"projected" to have independent significance is if the

1 word modifies the term "disposable income."

2 Thus, the Court concludes that the plain meaning of
3 § 1325(b) is dispositive of this issue. Under the clear
4 meaning of the statute, a debtor must propose to pay
unsecured creditors the number resulting from Form B22C,
unless the debtor can show that this number does not
adequately represent the debtor's budget projected into
the future.

6 *Jass, supra*, at 415-416 (footnotes omitted) (emphasis added); see
7 also *In re Fuller*, 346 B.R. 472, 479 (Bankr. S.D. Ill. 2006).

8 After examining the new statute and case law concerning
9 § 1325(b) (1) and (b) (2), this court determines to follow
the clearly emerging line of authority. It finds that
10 the historical "disposable income" calculation newly
created under § 1325(b) (2) is not dispositive of the
"projected disposable income" amount needed to fund a
11 chapter 13 plan. It agrees with those cases finding that
"projected disposable income" is different from
"disposable income" and that Congress, by leaving the
12 word "projected" in § 1325(b) (1) (B), intended a
13 distinction between the terms.

14 *In re Foster*, 2006 Bankr. Lexis 2259, at *21 (Bankr. N.D. Ind.
15 Sept. 11, 2006).

16 The conclusion that the term "projected disposable income" has
17 a meaning different than the term "disposable income" is required
18 by the long-standing rule of statutory construction that every word
19 in a statute is to be given effect. *Northwest Forest Resource
20 Council v. Glickman*, 82 F.3d 825, 834 (9th Cir. 1996).

21 In the situation now under consideration, absent one item
22 addressed below, there is no indication that the debtor's financial
23 circumstances will change. Thus, the "disposable income" reflected
24 on the debtor's Form B22C, as adjusted below, will in reality be
25 the debtor's "projected disposable income."

26 The Trustee correctly argues that it has been the experience
27 in this District that above-median income debtors will pay less to
28 unsecured creditors under BAPCPA than under the prior law. In this

1 District, many of the standard expenses allowed by § 707(b) would
2 have been considered unreasonable and unnecessary and would have
3 been disallowed under the prior law, resulting in greater plan
4 payments. But it is the prerogative of Congress to define
5 disposable income, and it has done so. Absent bad faith, lack of
6 feasibility, or failure to comply with other confirmation
7 requirements, plans which propose to pay properly calculated
8 disposable income reasonably anticipated to be received over the
9 life of a plan will meet the requirements of § 1325(b)(1). The
10 conclusion is that for above-median income debtors, the disposable
11 income calculated on Form B22C, as modified by any anticipated
12 change in financial circumstances known at the time of
13 confirmation, constitutes "projected disposable income" for
14 purposes of § 1325(b)(1).

15 **2. What are the proper calculations to be made regarding**
16 **specific line items on Form B22C?**

17 The Trustee also objects to confirmation based upon his belief
18 that certain expenses shown on the Form B22C have not been properly
19 calculated. The Trustee alleges amounts entered on lines 24, 28,
20 29, 33, 49 and 52 of the Form B22C relating to allowed expenses are
21 incorrect.

22 **Line 24:**

23 Line 24 allows the debtor to deduct an expense for food,
24 clothing, personal care, etc., based upon the IRS National
25 Standards for Allowable Living Expenses. To determine the amount
26 of this expense, one refers to the table provided as part of the
27 national standards and does a purely mathematical calculation based
28 upon the number of people in the debtor's household and the

1 debtor's gross income. On the Form B22C, the debtor's calculation
2 of monthly income of \$4,965 appears on lines 9, 10, 11, 12, 14, 18
3 and 20.

4 However, the debtor has not used the monthly income figure of
5 \$4,965 appearing on the Form B22C to calculate the expense allowed
6 on line 24. In performing the calculation of the allowed expense
7 under the IRS table, the debtor utilizes a monthly gross income
8 figure of \$6,761, which is his actual income as revealed on the
9 Schedule I. Neither Form B22C nor BAPCPA utilize actual monthly
10 income to determine disposable income. Use of the higher actual
11 income amount rather than the lesser amount of income calculated in
12 accordance with Form B22C and BAPCPA results in a larger allowed
13 expense under the IRS table. Utilizing the actual monthly income
14 figure on the Schedule I, debtor claims an expense under the IRS
15 table of \$1,306, whereas use of the monthly income amount
16 calculated in accordance with Form B22C and BAPCPA would result in
17 an expense of \$904.

18 The debtor argues that he is entitled to use gross income from
19 Schedule I because the IRS table refers to "gross income," and Form
20 B22C does not specifically refer to "gross income." However, it is
21 obvious that the entries on those lines are gross income as the
22 amounts on the relevant lines are "income" (as defined under
23 BAPCPA) before any deductions.

24 The calculation of the amount of a debtor's "current monthly
25 income," which results in the calculation of a debtor's disposable
26 income, is to be made by use of Form B22C. Debtors may not "mix
27 and match" forms. Debtor attempts to manipulate the calculations
28 required by Form B22C and BAPCPA in his favor by using the amount

1 of his actual monthly income rather than "current monthly income"
2 as required by BAPCPA. The expenses under Form B22C are related to
3 the income reflected on Form B22C, not some other amount of income
4 reflected on a different form and which is defined differently than
5 the income on Form B22C.

6 The appropriate amount of the expense deduction is \$904.

7 **Lines 28 and 29:**

8 Lines 28 and 29 deal with the Local Standards for
9 Transportation ownership/lease expenses. Use of the appropriate
10 standard results on Line 28 in an average monthly payment for the
11 first car of \$471. The average monthly payments for the second car
12 on line 29 is \$332. Debtors are to list the 60 month average of
13 their contractually required monthly payment and then deduct the
14 lesser of the monthly payment under the IRS standard or the average
15 contractual payment. If the average contractual payment is greater
16 than the IRS standard, the debtor is to deduct zero.

17 Debtor has two vehicles, a 2004 TX Honda motorcycle requiring
18 average contractual payments of \$219.64 and a 2004 Chevy Silverado
19 2500 pickup requiring average contractual payments of \$855.19.
20 Debtor lists his motorcycle as the first car and the pickup as the
21 second car. Lines 28 and 29 on the Form B22C thus claim the
22 following deduction for vehicle ownership expense:

23	IRS Standard First Car	\$471.00
24	Contractual Payment	\$128.12
	Expense Allowed	\$342.88
25	IRS Standard Second Car	\$332.00
26	Contractual Payment	\$855.19
	Expense Allowed	\$ - 0 -
27	Total Deduction for Car Ownership	\$342.88

1 The Trustee argues that debtor has again improperly
2 manipulated the line items on Form B22C to the debtor's advantage.
3 It is difficult to believe that a motorcycle would be the most
4 important or frequently used vehicle for a two-person family living
5 in a climate such as this. Whatever the debtor's opinion as to the
6 importance of the motorcycle, the Trustee is correct that the form
7 itself requires that the more expensive vehicle be considered the
8 first car. The appropriate calculation should be:

9	IRS Standard First Car	\$471.00
10	Contractual Payment	\$855.19
	Expense Allowed	\$ - 0 -
11	IRS Standard Second Car	\$332.00
12	Contractual Payment	\$128.12
	Expense Allowed	\$203.88
13	Total Deduction for Car Ownership	\$203.88

14 **Line 33:**

15 Line 33 allows, as an expense, court-ordered payments to a
16 debtor's ex-spouse or dependants. The debtor lists the amount of
17 \$600 as the court-ordered monthly payment, but admits that those
18 payments will cease on the 24th month of the plan. However,
19 11 U.S.C. 707(b) (2) (A) (iv) states that "the debtor's expenses for
20 all priority claims (including priority child support and alimony
21 claims) shall be calculated as the total amount of debts entitled
22 to priority, divided by 60." Although the debtor argues that the
23 total amount remaining due for support ($\$600 \times 24 = \$14,400$) should
24 not be amortized over 60 months, the statute so requires. The
25 appropriate deduction for this line item should be \$224.39.

26 This result is also mandated by the requirement of
27 § 1325(b) (1) to devote all projected disposable income to the
28 payment of unsecured creditors. The disposable income of the

1 debtor will increase in the 25th month of the plan, as the debtor
2 will no longer have this expense. The debtor's projected
3 disposable income differs from disposable income in this respect
4 and the plan payments must be adjusted accordingly in order to meet
5 confirmation requirements.

6 **Line 49:**

7 Line 49 reveals a monthly payment of \$256.55 to satisfy the
8 priority claim of the Internal Revenue Service. This would equal
9 \$15,393 over 60 months, but fortunately for the debtor, the Proof
10 of Claim filed by the Internal Revenue Service reflects a total
11 priority claim of only \$13,463.33. Averaged over 60 months, that
12 equals \$224.39, a \$32.16 difference. The debtor agrees that
13 \$224.39 is the appropriate amount for the expense item on line 49.¹

14 **Line 52:**

15 This line is the total of all deductions and must be modified
16 due to the above analysis. Once expense deductions are properly
17 calculated on Form B22C, the debtor's total deductions will
18 decrease, potentially resulting in greater plan payments.

19 **3. Does § 1325(b)(4) allow an above-median debtor to
20 propose a plan for less than five (5) years if debtor has no
21 projected disposable income available to pay unsecured creditors
22 under § 1325(b)(8)?**

23 The final basis for the Trustee's objection to confirmation is
24

25 ¹**Line 50** - The Trustee discovered a mathematical error made by
26 the debtor, which error disfavored the debtor as it reduced the
27 amount of the deduction to which the debtor was entitled. The
28 calculation appearing on this line will change, however, due to the
changes in certain lines referenced above.

1 that the debtor has not, but is required to, propose a five (5)
2 year plan. The plan proposed by these above-median income debtors
3 is for a term of three (3) years and will pay nothing to unsecured
4 claims. Subsection (b) of § 1325 establishes certain requirements
5 for confirmation, one of which is subpart (4) which requires that
6 debtor's projected disposable income received "in the applicable
7 commitment period" be paid to unsecured creditors through the plan.
8 The "applicable commitment period" is defined in (4)(A) as "not
9 less than 5 years" for above-median income debtors. The following
10 subpart (B) then establishes an exception by stating that in
11 situations involving above-median income debtors, plans may have
12 less than a five (5) year term if the plan pays unsecured claims in
13 full within a shorter period.

14 Despite the clarity of § 1325(b)(4), there has been
15 controversy regarding the necessity for above-median income debtors
16 to propose five (5) year plans if unsecured creditors will not be
17 paid in full in less than five (5) years. Plans are to provide
18 that all projected disposable income is to be paid to unsecured
19 creditors through the plan. § 1325(b)(1). If completion of Form
20 B22C demonstrates that no monthly disposable income exists which
21 could be paid to unsecured creditors under the plan, then arguably
22 there is no rationale for a five (5) year plan. *In re Fuger*, 347
23 B.R. 94 (Bankr. D. Utah 2006) involved above-median income debtors
24 who had "negative disposable income," i.e., their Form B22C stated
25 that monthly income was less than monthly expenses. The court
26 concluded that the determination of "applicable commitment period"
27 in (b)(4) was ambiguous when considered in the context of (b)(1) as
28 the phrase could be interpreted to refer to a length of time or a

1 monetary amount. Even though the debtors proposed a plan of less
2 than five (5) years, the plan was confirmed. The court read §
3 1325(b)(4) to require debtors to commit all disposable income
4 projected to be received in five (5) years to unsecured creditors.
5 As that amount of income was zero, the debtors could confirm a plan
6 of less than five (5) years. See also, *In re Alexander*, 344 B.R.
7 742 (Bankr. E.D.N.C. 2006).

8 This Court perceives no ambiguity in § 1325(b)(4). Once the
9 amount of projected disposable income has been determined, whether
10 that be by sole reliance on Form B22C or the Schedules I and J or
11 some other calculation, (b)(1) simply states that it must be used
12 to pay unsecured claims for an "applicable commitment period,"
13 which, in accordance with (b)(4), is either three (3) years or five
14 (5) years. Subpart (b)(4) makes no reference to any monetary
15 analysis to be used in determining the length of the plan, but
16 refers to a measurement of time. It is irrelevant whether the
17 projected disposable income is zero or \$1,000 or some other amount.
18 If unsecured claims are not to be paid in full, the plan must have
19 a length of three (3) years for below-median income debtors and not
20 less than five (5) years for above-median income debtors.

21 The debtors in *In re McGuire*, 342 B.R. 608 (Bankr. W.D. Mo.
22 2006) filed a Form B22C demonstrating projected disposable income
23 of \$178.10 per month and were above-median income debtors. The
24 proposed plan was for less than five (5) years. Finding that the
25 plain language of (b)(4) imposed a five (5) year plan requirement,
26 the Utah court refused to confirm the proposed plan.

27 The *McGuire* decision cites to the earlier decision of *In Re*
28 *Schanuth*, 342 B.R. 601 (Bankr. W.D. Mo. 2006) which involved below-

1 median income debtors and thus analyzed the three (3) year plan
2 requirement of (b) (4).

3 First and foremost, the plain language of § 1325(b) (1)
4 and (4) supports a temporal interpretation of ACP. The
5 term itself, "applicable commitment period," uses a word
6 with temporal meaning: "period" means a "chronological
7 division." The length of that chronological division is
8 described in temporal terms - 3 years or 5 years. And,
9 perhaps most telling of all, § 1325(b) (4)(B), the
10 provision that specifically contemplates plans shorter
11 than 3 or 5 years, uses the same temporal terms - a
12 debtor's ACP "maybe less than 3 or 5 years . . . but only
13 if the plan provides for payment in full of all allowed
14 unsecured claims over a shorter period.

15 When a statute's language is plain, the sole function of
16 the court is to enforce it according to its terms. Here,
17 the Court finds that the plain language used to describe
18 and define the scope of the commitment a debtor must make
19 of disposable income in a chapter 13 plan clearly
20 indicates that that commitment is temporal in nature.

21 *In re Schanuth, supra*, at 607 (footnotes omitted).

22 The temporal requirement contained in (b) (4), which is
23 applicable to above-median income debtors, is five (5) years. A
24 plan which provides less than full payment to unsecured creditors
25 and is for a period of less than five (5) years cannot be
26 confirmed. The debtors in this case must propose a plan with a
27 length of five (5) years.

28 CONCLUSION

29 "Projected disposable income," as referenced in § 1325(b) (1),
30 differs from "disposable income" as referenced in § 1325(b) (2).
31 The disposable income as calculated on Form B22C, after
32 consideration of anticipated changes in future disposable income
33 reasonably known at the time of confirmation, constitutes the
34 debtor's projected disposable income. The specific lines
35 referenced as incorrect on the Form B22C should be modified as
36 stated above. The plan should also be modified to provide for a

1 five (5) year plan, as the plan does not provide for payment in
2 full to all unsecured creditors and the debtor is an above-median
3 debtor. The Trustee's Objection to Confirmation of Plan is
4 sustained, and the debtor is granted leave to file a modification
5 of his plan consistent with the conclusions above.

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