

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**Transmittal Sheet for Opinions for Publishing and Posting on Website**

<b>Will this Opinion be Published?</b>	No
<b>Bankruptcy Caption:</b>	In re: Cynthia Robinson
<b>Bankruptcy No.:</b>	17bk10117
<b>Adversary Caption:</b>	N/A
<b>Adversary No.:</b>	N/A
<b>Date of Issuance:</b>	11/28/2017
<b>Judge:</b>	Hon. LaShonda A. Hunt
<b>Appearance of Counsel:</b>	
<i>Attorney for Debtor:</i>	Michael Spangler The Semrad Law Firm 20 South Clark, 28th Floor Chicago, IL 60603



matters currently pending before a higher court. Nevertheless, because the issue still arises at confirmation, this court reiterates its general agreement with the underlying premise of both *Morales* (which is not on appeal) and *Blake*. While there is no definitive word yet from the appellate court on the propriety of *Blake*, the United States Supreme Court already affirmed the authority of bankruptcy courts when calculating projected disposable income to “account for changes in the debtor’s income or expenses that are known or virtually certain at the time of confirmation.” *Hamilton v. Lanning*, 130 S.Ct. 2464, 2478 (2010). Significantly, the Court did not limit that holding to above-median debtors only. As such, this court concludes that prorating tax refunds and expenses by below-median debtors does not, on its face, run afoul of the Bankruptcy Code or controlling precedent.

Still, the Trustee is correct that even a below-median debtor relying on a lump sum payment received once a year to fund monthly plan payments must satisfy the confirmation requirements set forth in 11 U.S.C. § 1129. According to the Trustee, Robinson testified at her § 341 meeting in May 2017 that she had already spent her entire refund, which means she does not have \$398 each month to contribute to monthly expenses. Without the prorated tax refund, her monthly income from employment and food assistance total \$626.17. But Amended Schedule J lists monthly expenses of rent at \$149, utilities at \$220, food and housekeeping supplies at \$208, clothing at \$60, personal care products at \$40, transportation at \$100 and vehicle insurance at \$47, for a total of \$824. In essence, it appears that Robinson’s budget is short nearly \$200 every month, at least until she receives another annual tax refund. If she cannot meet her budget, the Trustee contends, Robinson certainly cannot make the proposed \$200 monthly plan payment which means the Plan is not feasible. The question is whether under these circumstances, Robinson has met her burden of proof for confirming the Plan.

A plan may not be approved unless it provides that all of the debtor’s projected disposable income during the relevant commitment period will be applied to make payments to unsecured creditors. 11 U.S.C. § 1325(b)(1)(B). Plan payments are dependent on whether a debtor’s reasonable monthly expenses can offset projected disposable income. Whatever is not offset, or the debtor’s disposable income, must be used as a debtor’s plan payment. Thus, if a debtor’s expenses are substantially less than monthly income, an increased plan payment may be appropriate.

A plan must comply with §1325(a)(6), commonly referred to as the feasibility requirement. Section 1325(a)(6) instructs that “the court shall confirm a plan if \* \* \* (6) the debtor will be able to make all payments under the plan and to comply with the plan.” 11 U.S.C. § 1325(a)(6). To be feasible, the plan must have a reasonable likelihood of success as determined by the particular circumstances of the plan and case. *In re Olson*, 553 B.R. 343, 348 (Bankr. N.D. Ill. 2016). In other words, “the bankruptcy court should be satisfied that the debtor has the present as well as the future financial capacity to comply with the terms of the plan.” *First Nat’l Bank of Boston v. Fantasia (In re Fantasia)*, 211 B.R. 420, 423 (1st Cir. BAP 1997); *see also In re Lewis*, 459 B.R. 281, 290 (N.D. Ill. 2011). A debtor does this by demonstrating that his income exceeds expenses by an amount sufficient to make the payments proposed by the plan. *In re Bernardes*, 267 B.R. 690, 695 (Bankr. D.N.J. 2001). On the other hand, a plan is not feasible and therefore not confirmable if a debtor’s income will not support the plan’s proposed payments. *Id.*

As an initial matter, the Trustee maintains that requiring below-median debtors to prorate estimated income and expenses on their schedules for purposes of § 1325(b) conflicts with multiple provisions of § 1325(a). That argument misses the point. In order to properly calculate projected disposable income under § 1325(b), the debtor must account for *all* anticipated income and expenses that are reasonably known. The method of accounting – monthly versus annually – has no bearing on that requirement or the debtor’s obligations under § 1325(a). In short, if a debtor’s tax refund portion of her income is prorated, then the expenses she uses to pay her refund can similarly be prorated so long as there is a reasonable basis to support the numbers. The debtor is not required to maintain a bank account with the tax refund as evidence that the money is available for the expected ongoing expenses either. Robinson states that she uses her tax refund when received to catch up on deferred bills and for other non-monthly expenses. While she may use some of the refund later in the year, she claims that is not usual for her.

The Trustee insists that *proof* of deferred expenses is necessary but the Code does not impose such a requirement. Section 1325(b)(2) permits debtors to deduct “reasonably necessary” expenses for themselves and their dependents. The amount of expenses that may be deducted is affected by whether the debtor’s currently monthly income is above or below the median income for the debtor’s household size in his state. If the debtor’s current

monthly income (“CMI”) is above the median, the debtor’s expenses are limited by § 707(b)(2). 11 U.S.C. § 1325(b)(3). If, on the other hand, a debtor’s CMI is below the median, no formal limits are prescribed and instead his reasonably necessary expenses are evaluated on a case-by-case basis. *See Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 71 n. 5, 131 S. Ct. 716, 725, 178 L. Ed. 2d 603, 612 (2011); *see also In re Brooks*, 784 F.3d 380, 384 n. 3 (7th Cir. 2015).

In this case, Robinson’s expenses for herself and a two-year old dependent can hardly be construed as unreasonable. In her response (Dkt. #28), Robinson explains that rent can be deferred, she can pay car insurance premiums less frequently and clothing expenses are not actually monthly, but purchases made throughout the year when necessary. Therefore, when Robinson receives her tax refund, she is able to shop in bulk or make annual payments near the date that she receives the refund. What further evidence the Trustee requires is not articulated in her objection. In addition, none of these expenses are excessive. For example, \$149 for rent in the Chicagoland area is extremely low as is \$208 for food for two people.

While the court acknowledges the Trustee’s concern that “[t]he schedules and plan payments could be freely manipulated” to reduce plan payments, it is not an issue here. Robinson’s financial circumstances allow her to pay her expenses less frequently than once a month so using her tax refund works for her situation, making her plan feasible. Moreover, Robinson’s meager expenses listed in Amended Schedule J leave little room for manipulation for the sole purpose of reducing her plan payments.

Finally, the Trustee does not assert that Robinson is currently delinquent on plan payments. That Robinson has managed to make monthly plan payments of \$200 for *more than six months* in the face of an additional \$200 budget deficit further bolsters her argument that the Plan is feasible. The Trustee’s objection to feasibility in these types of situations is certainly valid. On paper, the numbers simply do not add up. For financially distressed debtors already struggling to make ends meet, the scenario does not bode well for them. However, that does not automatically doom their cases either. It just means the debtor bears the burden of providing evidentiary support, i.e., testimony and/or documents, to show that her plan can work. There is no way to guarantee that any debtor will successfully complete a case. But that is not the standard the Code mandates. Here,

Robinson has presented enough to meet her burden of establishing a reasonable likelihood of success that gets her across the hurdle to confirmation.

For the foregoing reasons, the Trustee's Objection is overruled. The proposed Plan (Dkt. #20) will be confirmed by separate order.

**Dated:** November 28, 2017

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LaShonda A. Hunt  
United States Bankruptcy Judge