

**United States Bankruptcy Court  
Northern District of Illinois  
Eastern Division**

**Transmittal Sheet for Opinions for Posting**

**Will this opinion be published?**      No

**Bankruptcy Caption:**                      In re: Charles Roosevelt Williams

**Bankruptcy Number:**                      21 B 14066

**Adversary Caption:**                      N/A

**Adversary Number:**                      N/A

**Date of Issuance:**                      June 1, 2023

**Judge:**    David D. Cleary

**Appearance of Counsel:**

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

In re:	)	Case No. 21 B 14066
	)	
CHARLES ROOSEVELT WILLIAMS III,	)	Chapter 13
	)	
Debtor.	)	Judge David D. Cleary

**MEMORANDUM ORDER DENYING DEBTOR’S AMENDED MOTION TO MODIFY  
PLAN AND GRANTING TRUSTEE’S MOTION TO DISMISS**

This matter comes before the court on the motion of Marilyn O. Marshall, chapter 13 Trustee (“Trustee”) to dismiss this bankruptcy case for failure to make plan payments (EOD 44) (“Motion to Dismiss”), and the motion of Charles Roosevelt Williams III (“Debtor”) to modify his confirmed plan (“Motion to Modify”). The Motion to Dismiss and Motion to Modify were heard and the court entered a briefing schedule. The Trustee timely filed her response (“Response”) and the Debtor timely filed his reply (“Reply”). Debtor asked for leave to amend his motion, which the court granted, and he amended the Motion to Modify (EOD 61) (“Amended Motion to Modify”). The court entered a pretrial order, setting an evidentiary hearing on the matters, at which testimony was taken from the Debtor. Following the evidentiary hearing on March 15, 2023, the court entered another briefing schedule, allowing the parties time to file post-hearing briefs. The Debtor filed his brief; the Trustee did not. Having reviewed the papers and arguments, as well as the testimony of the Debtor, the court will deny Debtor’s Amended Motion to Modify and grant the Trustee’s Motion to Dismiss.

**I. BACKGROUND**

Debtor filed for relief under chapter 13 on December 13, 2021. He proposed a plan under which he would pay \$400 per month for 56 months and which would provide 100 cents on the dollar to his unsecured creditors. The Trustee filed a motion to dismiss for unreasonable delay.

Among other issues, she asserted that the Debtor failed to commit all disposable income to the plan. Debtor's schedules showed monthly net income of \$1,176.04.

The court continued Debtor's confirmation hearing from January 24 to February 14, and again to March 7, 2022.

On March 4, 2022, Debtor filed amended Schedule I and J ("First Amended Schedules"). He added a deduction of \$325.74 to Schedule I, described as "disability insurance." He also adjusted several expenses on Schedule J, including another line item in the amount of \$230 for "Disability Insurance." His monthly net income decreased to \$403.30.

The court continued Debtor's confirmation hearing from March 7 to March 28, 2022. On March 24, 2022, Debtor filed an exhibit described as "Proofs of expenses." The proofs included:

- paystub that purported to reflect the disability insurance deduction on amended Schedule I;
- approximately one month of transactions in Debtor's bank account, which showed: a CarShield expense of \$159.99; a security system expense of \$56.96; two direct-pay disability insurance policies in the amount of \$108.33 and \$120; and gasoline expenses totaling approximately \$212 over a two-week period.

The Trustee then filed an objection to confirmation on April 6, 2022 ("Objection to Confirmation"). Among other issues, she asserted that Debtor's payroll deduction for disability insurance began post-petition. This indicated bad faith to the Trustee, "as the debtors [sic] did not have those expenses for the 6 months prior to filing this case and has failed to establish the reasonable necessity." Trustee's Objection to Confirmation, ¶ 17.

Debtor filed a reply on April 29, 2022. The Trustee then recommended Debtor's plan for confirmation, and the court confirmed Debtor's plan on May 9, 2022.

On December 28, 2022, the Trustee filed the Motion to Dismiss. She alleged that Debtor had accrued a default of \$1,200, and that the most recent plan payment she received was on September 26, 2022.

Prior to the initial hearing on the Motion to Dismiss, Debtor filed the Motion to Modify. According to the testimony adduced at the evidentiary hearing, Debtor stopped working on April 13 and had major surgery on May 25, 2022. He took a three-month medical leave of absence from work, expecting, based on experience with prior surgeries, that this would be his total time off from work. Although he was not being paid his wages during this time, Debtor had taken out a short-term disability policy and was able to continue making plan payments while receiving disability insurance.

This insurance coverage expired after four months. (Debtor's Ex. 1.) Debtor previously had other insurance policies, but they were cancelled for non-payment, so he had no additional insurance coverage. Although Debtor expected to return to work before the expiration of his disability insurance, he experienced medical complications. His leave was extended to December 14, 2022, and then again to February 22, 2023. (Debtor's Exs. 2 and 3.)

At this point, Debtor filed the Motion to Modify, informing the court that the earliest possible date for his return to employment would be February 22, 2023. Since he was not receiving either wages or disability insurance, Debtor was unable to maintain his plan payments.<sup>1</sup> He therefore requested a suspension of payments until March 2023, and a deferral of the default, with an increase in his monthly obligation to \$445 once payments resumed.

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<sup>1</sup> Debtor testified that he received some income from the "pension board," in the approximate amount of \$111/day. From this income he must pay \$980/month to the City of Chicago for his benefits, and \$100/month to the Teamsters Local 700, in order to keep his position. This income does not cover his household expenses.

The Trustee objected to the relief sought in the Motion to Modify, and the court entered a briefing schedule. The parties timely filed the Response and the Reply. At the next court hearing on February 13, 2023, the Debtor indicated that he wished to file the Amended Motion to Modify. The court granted this request, and he filed the Amended Motion to Modify on March 2, 2023.

The major differences from the Motion to Modify are found in paragraphs 6 and 7 of the Amended Motion to Modify:

The Debtor's previous earliest possible return to work date was 2/22/2023 based on initial doctor's review, but that potential return date has been pushed back through at least 5/17/2023 based [on] further medical issues with his left leg. See attached Exhibit A.

As the Debtor's previous filings have demonstrated, this potential return to work is tentative, and may be further delayed if additional medical complications arise.

Amended Motion to Modify, ¶¶ 6-7. Debtor testified at the evidentiary hearing that he visited a physician specializing in vein issues on February 14, and he was restricted from work until May 17, 2023, due to a condition known as deep vein thrombosis. (Debtor's Ex. 5.) Since Debtor's job required him to be able to lift 35 pounds, and to engage in prolonged walking, sitting, standing and driving, the physician certified that these essential duties were not consistent with Debtor's capabilities. (Debtor's Ex. 6.) His employer approved the request for an extension of his medical leave. (Debtor's Ex. 4.) Debtor therefore filed the Amended Motion to Modify, requesting a suspension of payments until June 2023, and upon resumption of payments an increase in his monthly obligation to \$480.

The court set the matter for evidentiary hearing and entered a pretrial order. Debtor timely filed a list of witnesses and exhibits, as well as a pretrial brief. At the evidentiary hearing, the court heard testimony from Debtor and arguments from the parties.

Debtor testified that he has been employed by the City of Chicago, Department of Streets and Sanitation, for 14 years, and is trying extremely hard to return to work. “I’m doing everything medically possible, I’m giving over 110% and I anticipate going back. In good faith I’ve been trying to do everything I can to get there.” At the time of the evidentiary hearing, he felt very “positive” that he would be cleared to return to work around May 17, although he acknowledged that he is not a medical professional. “I’m just doing everything that they ask me to do, I’m in total compliance[.]”

Debtor acknowledged that he wanted and needed to return to work. At the time of the evidentiary hearing, he was three months behind on his mortgage payments. “I don’t want to lose my home, I’ve had it for 10 years, it’s my retirement home.... I’m struggling to keep afloat, I’ve got to borrow money from friends and family.... That’s motivation for me too, to get back to work.” If Debtor returned to work after the evaluation in May, his income would be slightly higher than before he left. Employees had received a raise while he was out on leave, so he would be able to afford \$480 plan payments.

The court also allowed the parties to file posttrial briefs that would address the question of whether Debtor is able to transfer from his current job to another position within the City of Chicago that would not have the same physical limitations. The court then continued the matter to May 22, 2023.

The Debtor timely filed his posttrial brief, which he supported with a sworn statement. According to these papers, if Debtor wished to take a new position with the City of Chicago, one with job requirements that he could satisfy, he “would have to resign from my current position and re-apply as a new worker, forfeiting the 14 years I have accrued towards my pension. Upon

information and belief any such position I could apply for ... would pay approximately half of my wages as an essential employee.” The Trustee did not file a posttrial brief.

## **II. DISCUSSION**

### **A. Standard for a motion to modify plan**

The decision on a motion to modify plan is left to the discretion of the bankruptcy judge. *See Matter of Witkowski*, 16 F.3d 739, 746 (7th Cir. 1994). There is no explicit standard in the Bankruptcy Code for determining whether a modification that falls within section 1329 should be approved. *See Germeraad v. Powers*, 826 F.3d 962, 971 (7th Cir. 2016). “However, courts routinely deem modification appropriate when there has been a postconfirmation change in the debtor’s financial circumstances that affects his or her ability to make plan payments.” *Id.*

As movant, Debtor bears the burden of proving that he satisfies the statutory requirements for modification in 11 U.S.C. § 1329(b)(1).

### **B. Motions to modify plans may include a suspension of plan payments**

Debtor has asked this court to suspend his plan payments until June 2023. The Bankruptcy Code allows modifications that extend the time for payments under a plan. 11 U.S.C. § 1329(a)(2). In certain situations, courts have allowed debtors to suspend their plan payments for a period of time. As one commentator explained:

For unsecured claim holders, a motion to suspend payments after confirmation rarely justifies an objection or a motion for conversion or dismissal. Unless the debtor is solvent and conversion to Chapter 7 would mean an immediate dividend, the Chapter 13 case is the unsecured claim holder’s best bet for payment. Keeping the debtor in Chapter 13, even at the expense of a temporary suspension of payments, is better than the alternatives.

Keith M. Lundin, Lundin on Chapter 13, § 127.1, at ¶ 4.

During closing arguments and in his pretrial brief, Debtor referred to a case that suggested the court might allow suspension of payments “based solely on a job loss and good-faith desire to resume work.” Debtor’s pretrial brief, p. 3.

The Ludwigs appear to be acting in good faith. If requested by the debtors ... I would approve a six-month suspension to permit Kathleen an opportunity to obtain employment and to permit [the] Ludwigs further opportunity to reduce expenses. At the expiration of six months, debtors would be required to file a further plan modification which would resume plan payments at the then-appropriate amount.

*In re Ludwig*, 411 B.R. 632, 635 (Bankr. N.D. Iowa 2008).

### **1. Case law allowing suspension of payments**

Other reported decisions have allowed a temporary suspension of the payments due under a confirmed plan. *See also In re Nickson*, 631 B.R. 475, 480 (Bankr. D. Kan. 2021)

(“[A]batement is the provision of a grace period in which a debtor may cure missed payments. Technically, when this Court grants a debtor’s motion to abate missed payments, it is declining to dismiss the debtor’s case for material default under § 1307(c)(6) so long as the debtor cures the missed payments within a reasonable time. The debtor’s obligations under the plan, however, remain intact.”) (footnotes omitted); *In re Noblin-Williams*, No. 20-00208-NPO, 2020 WL 8551779, at \*1 (Bankr. S.D. Miss. Nov. 23, 2020) (“On July 15, 2020, the Court entered the Order Suspending Plan Payments (Dkt. 33), suspending the Debtor’s past due chapter 13 plan payments and any ongoing mortgage payments paid through the Plan for July and August 2020.”); *In re Hutchison*, 449 B.R. 403, 405–06 (Bankr. W.D. Mo. 2011) (“Several times over the course of the next two years, the Debtor filed motions to suspend payments due under the plan which were granted by the Court. Those suspensions were granted on June 24, 2009, in the amount of \$285.00 (representing one month’s payment), on October 23, 2009, in the amount of \$700.00, on June 9, 2010, in the amount of \$700.00 and on September 20, 2010, in the amount of



\$1,125.00.”) (footnote omitted); *In re Miller*, No. 05-00335, 2008 WL 2323901, at \*1-2 (Bankr. N.D. Iowa June 5, 2008) (Denying confirmation of an amended plan, noting that “[a] long suspension of Chapter 13 payments can make completion of the plan speculative in a manner similar to plans which propose an end-of-plan balloon payment on secured debt.... Eight months is too long to keep creditors on hold without any payments.”); *In re Pina*, No. 05-10970-CAG, 2007 WL 4568990, at \*1 (Bankr. W.D. Tex. Dec. 23, 2007) (granting a motion for moratorium brought in three separate cases, noting that “[i]n all three cases, the Debtor is seeking a 60-day moratorium of plan payments for the following reasons: Ms. Lopez is having hip replacement surgery and needs six weeks to recover; Mr. Pina is out of work and is looking for new employment; and Ms. Thomas is out of work and is looking for a new job.”); *In re Mason*, 315 B.R. 759, 760 (Bankr. N.D. Cal. 2004) (granting motion to modify that, among other requests, sought to suspend plan payments for three months); *In re Kapp*, 315 B.R. 87, 88 (Bankr. W.D. Mo. 2004) (granting motion to modify over lender’s objection and finding that “a motion to suspend plan payments is not an impermissible modification of a security interest in real property that is the [Debtors’] principal residence”).

## **2. Court and trustee procedures allowing payment suspensions**

Some courts outside this jurisdiction have adopted rules or procedures that anticipate temporary suspensions. *See* Local Bankr. R. 3088-1(B) and (C) (Bankr. W.D. Mo.) (“The court may order the suspension of plan payments pursuant to a motion.... An order granting an abatement, waiver, or suspension, does not eliminate the payment; rather it adds payments onto the end of the plan and may require the plan to be amended because of the suspension.”);

<https://www.canb.uscourts.gov/procedure/san-jose/procedures-suspending-payments-chapter-13>

(chapter 13 Trustee may allow the debtor to suspend up to three payments without court

approval) (last retrieved May 31, 2023); Local Bankr. R. 3015-1(x)(3) (Bankr. C.D. Cal.) (“A motion for ... suspension ... of plan payments ... need not be served on creditors if: ... (B) the proposed suspension ... combined with any prior approved suspensions ... does not exceed 90 days of suspended payments[.]”); <http://www.flmb.uscourts.gov/faqs/#Thirtyseven> (“What should I do if I cannot make my Chapter 13 payment? If the Debtor cannot make a chapter 13 payment on time pursuant to the terms of the confirmed plan, the Debtor should contact the chapter 13 Trustee by phone and by letter advising the Trustee of the problem and whether it is temporary or permanent. If it is temporary, the Debtor should advise the Trustee of the time and manner in which the Debtor will make up the payments. So long as the Trustee agrees, the payments can be made up over time.”) (last retrieved May 31, 2023).

In fact, the version of the Court-Approved Retention Agreement for chapter 13 cases in the Northern District of Illinois filed prior to March 15, 2021, provides that after the bankruptcy case is filed, the attorney agrees to “[p]repare, file, and serve timely modifications to the plan after confirmation, when necessary, including modifications to *suspend*, lower, or increase plan payments.” (Local Bankruptcy Form 13-8, p. 3.) (Emphasis added.)

**C. Although suspension of payments may be allowed, it is not appropriate in this case**

The court finds, therefore, that under certain circumstances it is appropriate to allow a plan modification that provides for suspension of payments. However, suspension is temporary, not indefinite. The length of the suspension must be defined with certainty. For purposes of today’s decision, the court need not and will not decide what the maximum time period should be. It is clear that the eight-month suspension allowing the Debtor to return to work is an illusory request.

Having heard the Debtor's testimony and observed his demeanor, the court has no doubt that he was sincere in his desire to return to work and continue with his plan payments. He wants to prevent foreclosure of his residence and to pay his medical and other expenses. The court is sympathetic to the Debtor's situation, which is the result of one medical complication after another. Debtor even attempted to avoid this very issue by purchasing expensive disability insurance.

But the court must balance Debtor's sincerity and the court's own sympathy against the burden Debtor is asking his creditors to bear – that they wait a lengthy period of time for distributions under the plan to resume.

Debtor entered into a contract with his creditors when he confirmed his plan, promising to pay them 100 cents on the dollar in return for their agreement to refrain from collection activities. The confirmed plan provided for regular monthly distributions to the creditors on their claims. Yet the Trustee has received no funds from Debtor since September 26, 2022, and therefore cannot make those regular distributions to his creditors.

At the evidentiary hearing two months ago, Debtor indicated that he might be able to return to work after a doctor's appointment on May 17, 2023. Debtor's attorney appeared in court on May 22, 2023 and stated that Debtor would not be returning to work. Instead, his physician had advised him that he should take a medical disability / forced retirement as of June 30, 2023. Even if the court approved the payment suspension, Debtor will not be able to resume payments in June 2023.

The court finds that the modification Debtor requests of an eight-month suspension in payments followed by increased monthly payments is not proposed in good faith and is not feasible. This is not to say that throughout his bankruptcy case Debtor has not acted in

compliance with the requirements of the Bankruptcy Code; until September 2022, Debtor made his payments timely and kept his end of the bargain with his creditors. As he testified before this court, he acted “with good faith, and honorably.” The court heard this testimony and finds it credible. At this point, however, it is no longer fair to Debtor’s creditors to allow any further delay.

### **III. CONCLUSION**

For the reasons stated above, the plan modification does not satisfy either the requirement in 11 U.S.C. § 1325(a)(3) that it be proposed in good faith or the requirement in 11 U.S.C. § 1325(a)(6) that Debtor will be able to make the payments under the plan. Therefore, **IT IS ORDERED THAT** the Amended Motion to Modify is **DENIED** and the Motion to Dismiss is **GRANTED**.

ENTERED:

Date: June 1, 2023

A handwritten signature in cursive script, appearing to read "David D. Cleary", followed by the initials "3PB". The signature is written in black ink on a white background.

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DAVID D. CLEARY  
United States Bankruptcy Judge