

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

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Judge: David D. Cleary

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

In re:)	Case No. 22 B 2091
)	
NICOLE DeROO,)	Chapter 13
)	
Debtor.)	Judge David D. Cleary

ORDER DENYING MOTION TO MODIFY CONFIRMED PLAN

This matter comes before the court on the motion of Nicole DeRoo (“Debtor”) to modify her confirmed plan (“Motion to Modify”). Having heard the arguments of the parties and reviewed the submitted papers, the court will deny the Motion to Modify.

BACKGROUND

Debtor filed for relief under chapter 13 on February 24, 2022. Her current monthly income on Form 122C-1 qualified her as an above-median debtor, requiring a 5-year plan term. She therefore calculated her disposable income using Form 122C-2. Pursuant to Form 122C-2, Debtor’s monthly disposable income is \$696.25, so general unsecured creditors must receive a minimum distribution of \$41,775.00 over 60 months.

With her petition, Debtor filed a proposed plan that provided for payments of \$1,025 for 58 months and a dividend of 100 cents on the dollar to her unsecured creditors. Excepting student loans, filed unsecured claims total less than \$41,775, so the 58-month term satisfied the disposable income requirement. The court confirmed Debtor’s plan on May 9, 2022.

About six months after confirmation, on November 14, 2022, Debtor filed a motion to amend her payroll control order (“PCO Motion”). She had advised her attorneys that the current payroll deduction of \$474 biweekly was not sustainable and requested a reduction to \$226 biweekly while she finalized a motion to modify her plan. The court continued the PCO Motion

to allow Debtor time to file the Motion to Modify. On November 23, 2022, Debtor filed the Motion to Modify, and the court granted the PCO Motion at the continued status hearing. Debtor's payroll deduction decreased to \$332 biweekly until January 2023, at which point it resumed at \$474 biweekly.

Debtor asserted in the Motion to Modify that "her household expenses, most notably rent, utilities and medical expenses, have increased. Despite a small increase in her net monthly income the Debtor's budget will only support ongoing monthly plan payments of \$720." (Motion to Modify, p. 1.)

On the same date, Debtor filed amended Schedules I and J. She made the following changes from her original Schedules I and J:

	Original	Amended
Gross monthly income	\$5,376.84	\$5,820.34
Combined monthly income	\$4,005.34	\$4,338.16
Rent	\$600	\$750
Electricity/heat/gas	\$365	\$500
Water/sewer/garbage	\$110	\$200
Food/housekeeping	\$450	\$550
Medical/dental	\$50	\$200
Transportation	\$410	\$435
Monthly net income	\$1,025.34	\$723.16

Debtor agreed in the Motion to Modify that it would be appropriate to amend her plan to provide for turnover of her tax refunds in excess of \$1,200, if any. She acknowledged that a payment decrease from \$1,025 to \$720 would reduce the dividend to her unsecured creditors from 100% to 51%.

The Trustee filed a notice of objection in advance of the hearing on December 19, 2022. The court continued the Motion to Modify from the initial status hearing to January 9, and then again to January 23, 2023.

Three days before the January 23 hearing, Debtor filed several documents:

Docket #	Document	Description
40	Prescriptions	A typed list of 8 medications with an average monthly total cost of \$157.44.
41	Water/sewer/garbage receipts	Photographs of three invoices from the Village of Orland Park. None of the invoices describe the services rendered; each has a handwritten notation “water bill garbage sewer.” The dates and amounts are: August 31, 2020 \$532.87 October 31, 2020 \$547.65 December 31, 2022 \$520.53
42	Electric bill	Photograph of an undated invoice from an unidentified vendor in the amount of \$275.71.
43	Gas bill	Photograph of an invoice from Nicor Gas for the period from September 28 to October 28, 2022, in the amount of \$145.59.
44	Sworn statement	Sworn statement (dated January 17, 2023, although the signature is undated) from the Debtor attesting that she does not have a mortgage or lease in her name. She pays all of the household bills such as electric, gas, water, sewer and garbage as well as \$600 toward the mortgage. “My roommate’s work slowed down and cost-of-living increased, so I now pay for his car insurance as well as part of my housing contribution. This results in my net housing expense per month being approximately \$750 on top of my other expenses.”

At the January 23 hearing, the Trustee asserted that the documents Debtor had filed did not support the Motion to Modify. The Trustee offered to argue her points, or to file a written response. The court entered a scheduling order allowing her to file a response and the Debtor to file a reply. The court continued the Motion to Modify to February 27.

Both parties timely filed their papers. At the hearing on February 27, both the Debtor and the Trustee indicated that an evidentiary hearing was unnecessary.

DISCUSSION

Debtor asks the court to modify her plan by reducing her monthly payment as well as the projected distribution to unsecured creditors. She contends that the decrease in payments is necessary as a result of increased expenses, despite an increase in her monthly net income. Debtor filed several receipts that purport to support her claim of increased expenses.

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 she satisfies the statutory requirements for modification in [11 U.S.C. § 1329\(b\)](#). Therefore, any plan modification must satisfy [11 U.S.C. § 1325\(a\)](#), including the requirement in § 1325(a)(3) that the plan has been proposed in good faith.

In considering whether a plan is filed in good faith, the court asks of the debtor: ‘Is he really trying to pay the creditors to the reasonable limit of his ability or is he trying to thwart them?’... Whether a plan or petition is filed in good faith is a question of fact based on the totality of the circumstances surrounding the proposed plan.

In re Smith, [286 F.3d 461, 466](#) (7th Cir. 2002) (citations omitted). “The guiding focus of the inquiry must be whether the plan is fundamentally fair to creditors and fair in a manner that complies with the spirit of the Bankruptcy Code’s provisions.” *In re Heath*, [649 B.R. 313, 317](#) (Bankr. N.D. Ill. 2023) (quotation omitted). Factors that a court may consider include whether a debtor states her expenses accurately, whether inaccuracies amount to an attempt to mislead the

bankruptcy court and whether the proposed payments indicate a fundamental fairness in dealing with creditors. *See In re Rimgale*, 669 F.2d 426, 432-33 (7th Cir. 1982).

The question in this case is whether Debtor accurately stated her expenses on amended Schedule J. If she did, then her request to modify her plan by decreasing plan payments is brought in good faith. Having reviewed the documents Debtor filed in support of the Motion to Modify, the court concludes that they do not support the expenses listed on amended Schedule J, and therefore her proposed modification does not satisfy the good faith requirement of 11 U.S.C. § 1325(a)(3).

Water/sewer/garbage

In amended Schedule J, Debtor increased the cost of water/sewer/garbage from \$110 to \$200. In support of this increase, she filed a document that contains photographs of three invoices from the Village of Orland Park. The dates and amounts are:

August 31, 2020	\$532.87
October 31, 2020	\$547.65
December 31, 2022	\$520.53

The time period covered by these invoices is not apparent from the face of the documents. In her reply, Debtor argues that the frequency of the bills is publicly-available information, suggesting that the court consult <https://www.orlandpark.org/departments/finance/utility-billing> to confirm that these statements are sent every other month.¹ Even if Orland Park residents are billed every other month for water, sewer and garbage, these invoices are useless as evidence of an increased expense. First, they do not demonstrate that Debtor’s expense for water, sewer and garbage increased. The bills

¹ Under the How do I Activate My Water Service tab, the site states that water service customers receive bills on a bimonthly basis.

from 2020, prior to Debtor's petition date, are higher than the bill dated December 31, 2022. Second, there is nothing on the invoice to suggest that it is for water, sewer and garbage except a handwritten note. Third, even if it is for those items, it could include past due amounts, artificially inflating the total amount due. The court has only a summary page with the bill date, due date, amount due and various addresses, not a detailed invoice. For all of these reasons, Debtor has not demonstrated that her water/sewer/garbage line item on Schedule J increased from \$110 to \$200.

Electricity/heat/gas

Debtor states on amended Schedule J that her expenses for electricity, heat and gas increased from \$365 to \$500. In support of this contention, Debtor submitted two documents. The first is docketed as "electric bill documentation," although the vendor on the photographed invoice is unidentified. The document is an undated invoice in the amount of \$275.71. There is no basis for the court to conclude that the invoice is for post-petition expenses, or that it represents only one month of charges. Debtor acknowledged in her reply that "the statement ... does not show the amount of time that it took to accrue charges in the amount of \$275.71." (Debtor's Reply to Trustee's Response ("Reply"), p. 4.) For all of these reasons, there is no evidence that would support the conclusion that Debtor's electricity bill increased since the petition date.

As for her heat/gas expense, Debtor submitted a photograph of an invoice from Nicor Gas for the period from September 28 to October 28, 2022, in the amount of \$145.59. Unlike the "electric bill documentation," this invoice has specific dates, the vendor's name and does not appear to include past due amounts. Even accepting as true the contention that Debtor's most recent monthly obligation to Nicor Gas is approximately \$145, however, there is no evidence to

support a finding that this is an increase in Debtor's gas bill, or that her total electricity/heat/gas expense increased since the petition date from \$365 to \$500.

Medical/dental

In support of her contention that medical/dental expenses increased from \$50 to \$200, Debtor submitted a typed list of eight medications with an average monthly total cost of \$157.44. In her reply, Debtor asserts that she provided her attorneys with extensive prescription records, which support the increased expense. Debtor states that she suffers from several "long-term conditions and the prescriptions displayed in docket entry 40 are all long-term medical needs as a result." (Reply, p. 7.)

Debtor confirmed her plan less than seven months before filing the Motion to Modify and amending Schedule I/J. She supplied no evidence that her medical expenses increased during that seven-month period, or that any of these prescriptions were issued post-petition. Nevertheless, the court agrees that Debtor has provided support for a medical/dental line item in the amount of \$200. The cost of her prescriptions would leave approximately \$42 for any other medical or dental expense each month, and this is a reasonable amount for a budget.

Rent

In support of the alleged increase in rent from \$600 to \$750, Debtor filed an exhibit described as "sworn statement regarding rental increase." In this document, Debtor attests that she does not have a mortgage or lease in her name. She pays all of the household bills such as electric, gas, water, sewer and garbage as well as \$600 toward the mortgage. "My roommate's work slowed down and cost-of-living increased, so I now pay for his car insurance as well as part of my housing contribution. This results in my net housing expense per month being approximately \$750 on top of my other expenses."

Debtor's statement does not support a finding that the proposed decrease in plan payments is made in good faith. There is no indication that Debtor's increased contribution to her roommate was anything other than voluntary, helping this person during the undefined time period when their "work slowed down[.]" While it is commendable to help a roommate, Debtor cannot do so at the expense of her unsecured creditors. She entered into a contract with her creditors when she confirmed her plan, promising to pay them 100 cents on the dollar in return for their agreement to refrain from collection activities. She cannot choose to pay for her roommate's car insurance in lieu of fulfilling this obligation to her unsecured creditors.

Debtor argues that the court should take into consideration that she is still paying less than market rate for her share of the rent. In support of this argument, she cites *In re Crink*, [402 B.R. 159, 171](#) (Bankr. M.D.N.C. 2009). *Crink* is a chapter 7 case, in which the bankruptcy administrator (the equivalent of the U.S. Trustee, in North Carolina) sought dismissal for abuse. The *Crink* court acknowledged that "[i]n considering whether housing expense [sic] are excessive, due regard should be given to the size of the family, their reasonable needs, and the cost of alternative housing." *Id.* at 171. After hearing the debtors' testimony, and noting that IRS guidelines provided a lower figure, the court concluded that the debtors' housing expense was excessive.

Crink does not support a finding that the opposite conclusion should hold, that just because Debtor's housing expense remains below the IRS guidelines, an increase in that expense is submitted in good faith. The court must still review the totality of the circumstances. Moreover, the IRS guidelines for mortgage or rent expenses have already been considered on Form 122C-2, in calculating the Debtor's disposable income. Debtor took a deduction of \$1,329

for “mortgage or rent expenses,” as she was allowed to do, even though her actual housing expense at the time was \$600.

It is Debtor’s burden to prove that her proposed amendment complies with the Bankruptcy Code’s requirement that it be made in good faith. *See In re Shelton*, 592 B.R. 193, 200-01 (Bankr. N.D. Ill. 2018). In this case, the evidence before the court does not support a finding that Debtor’s increase in her housing expense from \$600 to \$750 shows a fundamental fairness in dealing with her creditors, and therefore it is not made in good faith.


CONCLUSION

For all of the reasons stated above, Debtor has not shown by a preponderance of the evidence that her water/sewer/garbage, electricity/heat/gas and rent expenses increased between the petition date and the filing of her amended schedules. Therefore, although the increase in medical/dental expenses from \$50 to \$200 on amended Schedule J appears to be made in good faith, the other increases are not. Since Debtor’s combined monthly income increased by more than \$300, the \$150 increase in medical/dental expenses is not sufficient to warrant a decrease in her monthly plan payments.

At the hearing on February 27, 2023, the Trustee stated that she stood on her request for dismissal. There is no pending motion to dismiss this case. Since the court has determined that Debtor’s plan modification does not satisfy the requirement of § 1325(a)(3) that it be proposed in good faith, **IT IS ORDERED THAT** the Motion to Modify is **DENIED**.

ENTERED:

Date: May 2, 2023



DAVID D. CLEARY
United States Bankruptcy Judge