

**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: Mary Ann Pappone

**Bankruptcy Number:** 20 B 05362

**Adversary Caption:** N/A

**Adversary Number:** N/A

**Date of Issuance:** July 14, 2023

**Judge:** David D. Cleary

**Appearance of Counsel:**

**Attorney for Debtor:**

Dale Riley  
Geraci Law LLC  
55 E. Monroe Street, Suite 3400, Chicago, IL 60603

**Attorney for Trustee Marilyn O. Marshall:**

Yanick Polycarpe  
Office of the Chapter 13 Trustee  
224 S. Michigan Avenue, Suite 800, Chicago, IL 60604

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

In re:	)	Case No. 20 B 5362
	)	
MARY ANN PAPPONE,	)	Chapter 13
	)	
Debtor.	)	Judge David D. Cleary

**ORDER GRANTING DEBTOR’S MOTION TO MODIFY PLAN**

This matter comes before the court on the motion of Mary Ann Pappone (“Debtor”) to modify her confirmed plan (“Motion to Modify”). The chapter 13 Trustee (“Trustee”) filed a notice of objection and opposed the Motion to Modify. For the reasons stated below, the court will grant the Motion to Modify.

**I. BACKGROUND**

Debtor filed for relief under chapter 13 on February 27, 2020. The court confirmed her plan on July 20, 2020 (“Original Confirmed Plan”). According to the Original Confirmed Plan, Debtor would make monthly payments of \$750 for 60 months. Unsecured creditors were to receive at least 10 cents on the dollar.

The Original Confirmed Plan also required Debtor to tender to the Trustee copies of her tax returns on an annual basis. After reviewing the Debtor’s 2021 tax return, it appeared to the Trustee that Debtor’s annual income had increased.

In November 2022, the Trustee filed a motion to modify plan (“Original MTM”). She alleged that Debtor had additional monthly disposable income that could be committed to her plan payments, including commissions and bonuses. The court reviewed the documents submitted and concluded that there had been a postconfirmation increase in Debtor’s income. On February 27, 2023, the court granted the Original MTM, entering an order on March 2, 2023,

that increased Debtor's plan payment to \$2,071 and the dividend to unsecured creditors to 100 cents on the dollar.

Slightly more than a month after the court granted the Original MTM, Debtor filed the Motion to Modify. She alleged that her position at her employer had changed. Although her base salary remained the same, she was no longer eligible to receive commissions. As an exhibit to the Motion to Modify, Debtor attached a letter from her employer dated March 7, 2023. In relevant part, the letter states:

Please accept this as confirmation of your change in position from Sales – Senior Living Advisor to Senior Training Specialist which had an effective date of 02/01/2023....

You no longer qualify for commission as the current role is in Operations instead of Sales.

(Motion to Modify, Ex. A.)

Debtor also attached updated Schedules I and J to support her contention that she no longer had disposable income of \$2,071 to commit to her plan. "In theory her budget shows \$1,844.59 available, but \$1,632.10 of her monthly income is via Social Security benefits and therefore not disposable income under 11 U.S.C. § 101(10A)." (Motion to Modify, ¶ 7.)

Debtor asked the court to approve a decrease in her plan payment from \$2,071 back to \$750, and to reduce the minimum dividend to unsecured creditors to 50%.

The Trustee filed a notice of objection prior to the initial hearing on the Motion to Modify. At that initial hearing, she verbally objected to the Motion to Modify, noting that Debtor's original Schedule I had not been accurate because it did not include her commissions or bonuses. The Motion to Modify did not provide information about whether the change in Debtor's employment position, to one for which commissions were no longer available, was intentional or not. The Trustee also pointed out that the Motion to Modify made no mention of

whether Debtor would continue to receive bonuses. Debtor's attorney acknowledged that more information would be helpful regarding the nature of the job change. The court continued the hearing for two weeks to allow the parties to discuss the issues and to decide whether an evidentiary hearing might be required.

On May 10, 2023, Debtor filed another letter from her employer as an exhibit. (EOD 61.) The letter is dated May 1, 2023, and is titled Displacement Notification. In relevant part, the letter states:

As a result of internal changes, it was necessary to eliminate your position as Senior Living Advisor. The role of Senior Training Specialist has become available. We understand this transition is a difficult one, however, if you decide to decline the new role, we will no longer have an internal position for you at American House. We will provide you with unemployment benefits as you transition to your next opportunity. Please accept this change in position from Sales – Senior Living Advisor to Senior Training Specialist which is effective 02/01/2023.

The salary of \$92,895.27 remains unchanged, except in the event of annual Performance Reviews. Benefits, PTO, and Holidays remain unchanged.

*(Id.)*

At the next hearing on May 15, 2023, the Debtor's attorney indicated that he had documentation showing the involuntary nature of her job change, had communicated with the Trustee and had forwarded a recent paystub to her as requested. The Trustee stated that she had reviewed the documents submitted by Debtor and maintained her position that the Motion to Modify was not brought in good faith. Debtor had previously filed schedules at EOD 44 that omitted her commission and bonus income, and later filed schedules that omitted her bonus income and part of her commission income. The Trustee asserted that she did not "know that she is not still hiding income," and continued to oppose the Motion to Modify.

Debtor's attorney requested one week to try to reach a compromise, noting that during the briefing on the Original MTM he had mentioned that Debtor's income would be reduced and

anticipated bringing the Motion to Modify. The court allowed the parties an additional week to discuss the issues and to consider how to proceed, including whether the parties would stand on their oral argument or whether an evidentiary hearing or briefing might be necessary.

At the final hearing on the Motion to Modify, the Trustee pressed her position that the Debtor was not proceeding in good faith, based on previously filed inaccurate schedules. She noted that the Debtor is substantially current with her plan payments even now, three months after the elimination of her commissions. Debtor's attorney indicated that Debtor would agree to turnover of any bonuses as an additional plan payment, and that she is willing to provide her paystubs at whatever frequency necessary to show that she is not receiving commissions. The Trustee did not think that "cross-examining the Debtor would be fruitful.... As to her offer of bonuses, again, I shouldn't have to chase the Debtor every year to give me her paystubs, to give her bonuses.... I don't find merit in that offer[.]"

The court then took the Motion to Modify under advisement.

## **II. DISCUSSION**

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

Debtor asks the court to modify her plan by reducing her monthly payment to the amount in her Original Confirmed Plan, although the dividend to unsecured creditors would be 50% rather than 10%. She contends that the decrease in payments is necessary as a result of decreased income, and she filed two letters from her employer that support her contention.

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 11 U.S.C. § 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.*

## **B. Debtor's plan is proposed in good faith**

### **1. Good faith requirement found in 11 U.S.C. § 1325(a)(3)**

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

### **2. Debtor's plan modification is proposed in good faith**

In this case, the Trustee disputes the Debtor's good faith because of inconsistent statements in her postpetition schedules. The Trustee has raised the question of whether Debtor is acting in good faith by pointing out that past iterations of Schedule I did not disclose her commissions or bonus income. The Trustee argued that we could not "know that [the Debtor] is not still hiding income[.]" The Trustee presented no authority to support her argument that past inaccuracies mandate a finding that the Debtor cannot be acting in good faith now.

The question before the court is whether *this plan* is proposed in good faith. In a situation where a debtor's *prepetition* activities were "deplorable," the Seventh Circuit stated:

“[A] Chapter 13 plan may be confirmed despite even the most egregious pre-filing conduct where other factors suggest that the plan nevertheless represents a good faith effort by the debtor to satisfy his creditor’s claims.” *Smith*, 286 F.3d at 467 (quotation omitted). Whether examining *prepetition* or *postpetition* conduct for evidence of good faith in order to approve a plan modification, the question remains the same – despite questionable past conduct does the Debtor’s conduct supporting *this plan* represent “a good faith effort by the debtor to satisfy [her] creditor’s claims.” *Id.*

When she filed the Motion to Modify, Debtor supplied the court with a letter from her employer regarding her job change and the loss of commission income. When the Trustee questioned whether the job change was intentional, implying that the Debtor voluntarily reduced her income in order to avoid paying her unsecured creditors, Debtor presented a second letter from her employer stating that the transfer was a result of internal changes at the company.

The Trustee did not call Debtor as a witness to take testimony regarding the timing and nature of this job change. Therefore, the only evidence before the court is the two letters from her employer. These letters strengthen the Debtor’s position that she seeks this modification in good faith.

In this case, another factor to consider is that even a reduced plan payment of \$750 requires the Debtor to contribute income to her unsecured creditors that would otherwise be unavailable to them, as benefits received under the Social Security Act are excluded from the Bankruptcy Code’s definition of current monthly income. This factor suggests that Debtor is proceeding in good faith, that she is “trying to pay the creditors to the reasonable limit of [her] ability[.]” *Smith*, 286 F.3d at 466.

Additionally, Debtor's attorney indicated that Debtor would agree to turnover of her bonuses, and that she is willing to provide copies of her paystubs. The Trustee declined this offer, but it further supports a finding of good faith on Debtor's part.

Debtor lost the position she had with her employer that provided her with commissions above her base income.

Although the Seventh Circuit has adopted a relaxed standard for modification and has determined there is no threshold requirement under § 1329, even those jurisdictions requiring substantial changed circumstances to justify a plan modification permit debtors to reduce payments to unsecured creditors based on an involuntary and unanticipated reduction in income. Accordingly, in light of the Debtor's sudden and unanticipated loss of employment, the Court finds that her proposal ... is made in good faith.


*In re McPike*, No. 05-30518-SVK, 2007 WL 2317420, at \*2 (Bankr. E.D. Wis. Aug. 8, 2007) (granting motion to modify plan that proposed reduction in payment to unsecured creditors by one-half of a tax refund) (quotation, citations and footnote omitted). Here, Debtor submitted two letters from the employer to document the transfer and its involuntary nature. Based on her current financial situation, Debtor offers to pay her creditors to the best of her ability and proposes her modified plan in good faith.

### III. CONCLUSION

For all of these reasons, and having considered the totality of the circumstances, the court finds that Debtor has satisfied her burden of showing that her proposed plan modification is proposed in good faith and complies with the requirements of 11 U.S.C. § 1329. The Motion to Modify is **GRANTED**.

ENTERED:

Date: July 14, 2023

  
\_\_\_\_\_  
DAVID D. CLEARY  
United States Bankruptcy Judge