UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:	)	Case No.: 08-31348
	)	Chapter 13
Brian D. Hall and	)	
Diane A. Hall,	)	
	)	
Debtors.	)	

Appearances:

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Memorandum-Decision and Order Confirming Debtors' Plan

Before the court is the Chapter 13 trustee's ("Trustee") objection to confirmation of the plan filed by Brian D. Hall and Diane A. Hall ("Debtors"). The other objections to Debtors' proposed plan have been resolved, and the only remaining issue is whether Debtors should provide for an increase in the amount of their plan payment after their vehicle debt is satisfied during the term of the plan.[1] The court has core jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157(a), (b)(1), and (b)(2)(L). This memorandum-decision incorporates the court's findings of fact and conclusions of law as permitted by Fed. R. Bankr. P. 7052 as made applicable by Fed. R. Bankr. P. 9014(c). For the following reasons, the court overrules Trustee's objection.

[1] Alliance Bank filed an objection to Debtors' valuation of their 2001 Pontiac. Trustee objected on two additional grounds related to feasibility and the treatment of tax refunds. Because the parties reported that these issues have been resolved, the court will not consider them as part of this decision.

FACTUAL BACKGROUND

Debtors filed their petition for chapter 13 relief on May 28, 2008. Included on their itemized list of personal property on Schedule B is a 2001 Pontiac Minivan. Debtors will satisfy the debt secured by the 2001 Pontiac during the term of their plan.

Debtors calculate their annualized current monthly income on Form 22C to be $104,040.60. Because Debtors' income is greater than the applicable median family income for a family of comparable size living in the same locale, they are considered above-the-median debtors.[2] After deducting all allowable expenses from their current monthly income, Debtors calculate their "monthly disposable income" to be (-)$2,137.02. On Schedule J, "Current Expenditures of Individual Debtors," Debtors list two automobile installment payments, for $365.00 and $248.00.[3] Debtors calculate their monthly net income on Schedule J to be $108.53. Debtors propose a plan that requires monthly plan payments of $184.00 for 60 months with a 4% dividend payable to unsecured creditors, an amount apparently based on monthly net income as calculated on Schedule J.[4]

DISCUSSION

Since the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), there has been a significant amount of litigation as to how to calculate a debtor's "projected disposable income" for purposes of plan confirmation under section 1325 of the United States Bankruptcy Code, 11 U.S.C. §§ 101–1532 (2008), ("Code"). *See In re Osei*, 389 B.R. 339, 344 (Bankr. S.D.N.Y. 2008). Under Code section 1325(b)(1), a plan cannot be

[2] Debtors maintain a family of six. As of the petition date, the applicable median family income for a family of six living in New York State was $91,464.00 See United States Trustee's website at http://www. usdoj.gov/ust/eo/bapcpa/meanstesting.htm ("US Trustee website") providing applicable median family income information by locale and family size.

[3] The $248.00 per month payment is for the 2001 Pontiac Minivan.

[4] Debtors initially proposed plan payments of $100.00 per month, but agreed to increase their plan payment to $184.00 per month to cover the outstanding mortgage arrears and resolve Trustee's objection related to feasibility.

confirmed over the objection of the trustee or an unsecured claimant unless all claims are paid in full or the debtor provides all of his "projected disposable income" to be received during the applicable commitment period for payment to unsecured creditors through the plan. 11 U.S.C. § 1325(b)(1).

Code section 1325(b)(2) instructs debtors on how to calculate their "disposable income." Code section 1325(b)(2) states:

> For the purposes of this subsection, the term "disposable income" means *current monthly income received by the debtor* (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) *less amounts reasonably necessary to be expended—*

11 U.S.C. § 1325(b)(2) (emphases added). Code section 1325(b)(3) then instructs above-the-median debtors on how to determine "amounts reasonably necessary to be expended." Code section 1325(b)(3) states:

> Amounts reasonably necessary to be expended under paragraph (2) . . . shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—
>
>> . . . (C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals, plus $575 per month for each individual in excess of 4.

11 U.S.C. § 1325(b)(3). Under Code section 1325, above-the-median chapter 13 debtors calculate their disposable income by taking their "current monthly income" and subtracting "amounts reasonably necessary to be expended." *Id.* For above-the-median debtors, those "amounts reasonably necessary to be expended" are determined under Code sections 707(b)(2)(A) and (B). *Id*.

Code section 707(b)(2)(A)(iii)(I) governs "Future payments on secured claims," entered on Line 47 of Form 22C. It provides in pertinent part:

> (iii) The debtor's average monthly payments on account of secured debts shall be calculated as the sum of—
> (I) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition . . . divided by 60.

Trustee does not dispute the amounts entered on Form 22C, but rather argues that Debtors' plan payments increase after the expense for the second automobile is no longer a monthly expense. In effect, Trustee argues that because Debtors base their plan payments on calculations made on Schedule J, when the expenses listed on Schedule J change, so does the calculation of monthly net income. Trustee concludes that plan payments should likewise change in accordance with the calculations on Schedule J. Debtors respond that the subject vehicle will not last through the remaining four years of the plan and Debtors are in the process of obtaining a replacement vehicle. Debtors assert that once the secured debt is paid in full, they expect they will require the funds to make monthly payments on the replacement vehicle.

The issue of whether plan payments should be increased after a secured debt is satisfied during the life of the plan was examined by the court in *In re Hughey*, which found:

> The above median income Debtor's projected monthly disposable income is unaffected by the fact that the Debtor's actual monthly expenses may be reduced after the [vehicle] loan is paid off. In addition, the Court notes that Form B22C factors in the early payoff of the [vehicle] Loan by calculating the amounts contractually due on the [vehicle] loan in the sixty months following commencement of the case and dividing by sixty. . . . [T]he Court finds that confirmation does not require Debtor's Chapter 13 Plan to provide for increased payments when the [vehicle] loan is paid off.

380 B.R. 102, 107 (Bankr. S.D. Fla. 2007).

The *Hughey* court calculated plan payments by subtracting expenses on Form 22C from monthly gross income reported on Schedule I. *Id*. at 108. Here, Debtors do not base their plan payments on the calculations on Form 22C but rather on monthly net income as calculated on Schedule J. The court finds that this distinguishing fact does not warrant a different result.

Given that Form 22C indicates negative monthly disposable income and Debtors have based their plan payments on their actual monthly net income available at the time of confirmation, the *Hughey* holding still applies. This court chooses not to confirm a plan based upon an anticipated change in expenses that may or may not prove accurate in the future.[5] Given the uncertainty of Debtors incurring debt for a replacement vehicle and the greater cost of maintaining an older vehicle, the court is reluctant to require increased plan payments based upon the projected availability of additional funds following a payout of secured debt at a future date. Should future financial reporting confirm that Debtors have additional disposable income, then, at such time, Trustee may file a separate motion to modify.

Accordingly, Trustee's objection is overruled and Debtors' plan is confirmed. Trustee is requested to submit a confirmation order in accordance with this decision.

Dated: May 26, 2009
Syracuse, New York

/s/ Hon. Margaret Cangilos-Ruiz
Hon. Margaret Cangilos-Ruiz
United States Bankruptcy Judge

[5] The court notes that if Debtors find a replacement vehicle for the 2001 Pontiac, which they state they are attempting to do, they will have to file an appropriate motion to incur debt. That motion may trigger further inquiry by the Trustee into this matter. As a result, Debtors' expenses will change, necessitating the filing of an amended Schedule J.