

IT IS SO ORDERED.



Dated: November 26, 2007
04:21:52 PM

Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

MICHAEL GEORGE MARINECZ and
CATHERINE ANN MARINECZ,

Debtors.

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* CASE NUMBER 07-41250
*
* CHAPTER 13
*
* HONORABLE KAY WOODS
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MEMORANDUM OPINION REGARDING eCAST'S OBJECTION
TO CONFIRMATION OF PLAN

Before the Court is Objection to Confirmation of Chapter 13 Plan ("Objection to Plan") (Doc. # 17) filed by Bank of America/FIA Card Services, formerly MBNA, by eCAST Settlement Corporation, as its agent, and eCAST Settlement Corporation, assignee of GE Money Bank/JC Penney Consumer and The GAP (collectively, "eCAST")¹ on

¹eCAST filed three proofs of claim in this case, as follows: (i) Claim No. 4 in the amount of \$32,627.86 filed by eCAST as assignee of Bank of America/FIA Card Services, formerly MBNA; (ii) Claim No. 6 in the amount of \$845.89 filed by eCAST as assignee of GE Money Bank/The GAP; and (iii) Claim No. 7 in the amount of \$2,027.77 filed by eCAST as assignee of GE Money Bank/JC Penney Consumer. There is no documentation attached to any of these proofs of claim that establish

July 10, 2007. The Objection to Plan sets forth several objections to confirmation of the Chapter 13 Plan filed by Debtors Michael George Marinecz and Catherine Ann Marinecz ("Debtors"). The Court held a hearing on the Objection to Plan on August 2, 2007, at which time counsel for all parties - eCAST, the Debtors, and the Standing Chapter 13 Trustee ("Trustee") - requested time to file briefs.

The Court set a briefing schedule, which required Debtors to file a brief in response to the Objection to Plan by September 17, 2007, and permitted eCAST and Trustee to file reply briefs by October 1, 2007. Debtors filed Response of Debtors to Objection to Confirmation ("Debtors' Response") (Doc. # 21) on September 17, 2007. Trustee filed Standing Chapter 13 Trustee's Memorandum ("Trustee's Memorandum") (Doc. # 22) on September 18, 2007, and eCAST filed eCAST's Reply Brief ("eCAST's Reply") (Doc. # 23) on October 1, 2007.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (L). The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052. The Court has considered the Objection to Plan and all briefs in rendering this opinion.

a valid assignment to eCAST or that eCAST is actually a creditor of this bankruptcy estate. Since neither Debtor nor Trustee has questioned the validity of eCAST's claims or the propriety of eCAST's Objection to Plan, this Court will, for purposes of this Opinion only, deem eCAST to have *prima facie* claims that entitle it to object to confirmation.

I. FACTS

Debtors filed a voluntary petition pursuant to chapter 13 of the Bankruptcy Code on May 25, 2007 ("Petition Date"). In addition to the required schedules and other documents, Debtors filed Form 22C on the Petition Date. Form 22C listed \$5,773.00 on line 11 as Debtors' total income and listed \$4,720.00 on line 58 as Monthly Disposable Income Under § 1325(b)(2). Debtors filed a chapter 13 plan ("Plan") on the Petition Date that provided for Debtors to contribute \$1,000.00 per month for 60 months. On June 4, 2007, Debtors filed Form 22C (Doc. # 15), which again listed \$5,773.00 as total income on line 11, but had hand-written changes that resulted in \$558.00 as the Monthly Disposable Income on line 58. Although not denominated as such, the Court views and deems Doc. # 15 to amend and supersede the original Form 22C filed on the Petition Date, and will deal only with the second Form 22C in this opinion.

Among other items, Debtors own two vehicles: a 2003 Mitsubishi Outlander, upon which Mitsubishi has a lien, and a 1997 Subaru Outback, which Debtors own outright. In determining the amount of income to contribute to their chapter 13 plan, Debtors claimed the IRS Local Standard deduction for each of the two vehicles.

In the Objection to Plan, eCAST asserts that the Plan cannot be confirmed because it fails to apply all of Debtors' projected disposable income to payments to unsecured creditors. eCAST bases its objection on the following arguments: (i) Debtors' disposable

income must be increased by \$917.00 because Debtors' Schedule I lists total income of \$6,690.00 rather than \$5,773.00; (ii) Debtors are not entitled to claim a vehicle ownership expense for a vehicle they own outright; and (iii) Debtors are limited to their actual vehicle payment, averaged over 60 months, rather than the IRS Local Standard allowance.

Debtors counter that: (i) they are permitted to take the IRS Local Standard vehicle ownership expense even if they do not owe any money on a vehicle; (ii) they have properly calculated disposable income according to § 1325(b)(1)(B); and (iii) they are permitted to take the entire IRS Local Standard vehicle ownership expense even if their actual car payment is lower.

Trustee supports the Objection to Plan, but suggests that there is really only one issue for the Court to consider, which is: May a debtor utilize hypothetical expenses in categories established by the IRS, if those expenses do not exist, in order to arrive at the disposable income available for distribution to general unsecured creditors? Trustee believes this question must be answered in the negative.

II. ANALYSIS

Statutory deconstruction of the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") is fraught with difficulties. Court decisions based on interpretation of the "plain meaning" of specific statutory language have reached

diametrically different results. As Judge Pamela Pepper succinctly stated:

As time passes, and distinguished bankruptcy courts across the country issue more decisions interpreting various provisions of BAPCPA, this Court becomes more and more skeptical of the usefulness of the "plain meaning" doctrine as a tool of statutory interpretation. Words rarely exist in a vacuum; they rarely have fixed, single meanings. They exist, and are understood, in contexts -- temporal contexts, societal contexts, and textual contexts. Most are susceptible to multiple layers of meaning. In the case of words that make up statutes, they take on meaning from the history of the law they announce, or the words they replace, or from the words which Congress did *not* choose to use.

In re Sawdy, 362 B.R. 898, 904 (Bankr. E.D. Wis. 2007) (emphasis in original).²

The body of case decisions regarding the questions presented herein is conflicting with what appears to be sound reasoning on all sides. Because of the various well-reasoned - yet conflicting - decisions, this Court reluctantly enters the fray and adds its voice to the cacophony of opinions regarding confirmation of chapter 13 plans under BAPCPA.

The Court will deal with each of the arguments presented in

²*Sawdy* probably provides the best summary of the consistencies and inconsistencies of the various opinions [concerning whether the IRS Local Standards are fixed deductions or caps for vehicle expenses]. Six rationales were discussed from prior cases." Michael Louis Catrett & Marjorie Payne Britt, *Means Testing and the Vehicle Ownership/Lease Expense Deduction: Allowance or Actual Expense?* 26-5 AM. BANKR. INST. J. 10, 68 (June 2007). The rationales reviewed by the *Sawdy* court were: (1) the Plain Meaning Rationale; (2) the Unfair Results Rationale; (3) the Ownership/Liability Distinction Rationale; (4) the Policy Rationale; (5) the Applicable vs. Actual Rationale; and (6) the Reliance on IRS Materials Rationale. The *Sawdy* court accepted the last of these rationales and held that the debtors were permitted to deduct the IRS Local Standard for their vehicles. *Id.* at 68-69.

the Objection to Plan and the briefs, but not necessarily in the order presented.

A. TRUSTEE'S SINGLE QUESTION

Trustee offers his opinion that, because of tension between chapter 7 and chapter 13 objectives, if the IRS Local Standards on Form 22C result in "phantom" expenses, they "deserve no role in arriving at a Chapter 13 plan payment." (Trustee's Memorandum at 2.) Trustee argues that "utilization of the [IRS] standards to ascertain whether or not abuse exists [in filing a chapter 7 petition] does not carry over well into ascertaining the very specific dollar contribution which a debtor is required to devote to a Chapter 13 plan." (*Id.* at 2-3.) As a consequence, Trustee states - without any citation to authority - that a debtor's expense deductions should be limited to the lesser of the IRS Standards or debtor's actual expense. (*Id.* at 4.) As set forth *infra*, the Court does not find support in the Bankruptcy Code for the argument that a debtor's chapter 13 expenses are the lesser of the IRS Standards or actual expenses.

Trustee argues that basing a debtor's contribution to a plan on historical income "invites disaster," although he also notes that "in most instances the debtor's past six month historical income . . . will most likely provide the answer to debtor's projected disposable income." (*Id.* at 3.) Citing to § 1325(b)(3), Trustee emphasizes that this provision requires that "[a]mounts reasonably necessary to be expended under paragraph (2) shall be

determined in accordance with subparagraphs (A) and (B) of section 707(b)(2). . . ." (*Id.* at 5 (emphasis in Trustee's Memorandum, but not in statute).)

Trustee uses a dictionary analysis to argue that "in accordance" does not mean "precisely as," but rather means "in harmony, conforming or similar, not identical." (*Id.* at 6.) Relying on this definition, Trustee argues that this Court should utilize its discretion and determine plan payments based upon the actual Schedule I and J income and expenses. Trustee's argument, however, begs the question of how § 1325(b)(3) should be interpreted. "In accordance" is also defined as "in conformity with" and has the meaning of "adherence to correct process." ENCARTA WORLD ENGLISH DICTIONARY (North American ed.) "Conforming" can mean "behaving according to usual standards" or "operating according to rule." *Id.* Thus, Trustee's emphasis of the phrase "in accordance with" does not provide any guidance to this Court concerning the mandate in § 1325(b)(3) that "[a]mounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2)[.]"

The Court finds facial appeal in Trustee's argument that the Court should look to Schedules I and J to determine if Debtors are contributing all of their projected disposable income to the plan. By doing so, the Court would be able to consider Debtors's actual current income, as opposed to a six month historical average. In addition, utilization of Debtors' actual expenses in Schedule J, as

well as current income in Schedule I, would appear to provide a better picture of the amount of disposable income that Debtors could devote to repaying creditors in a chapter 13 plan.

Despite the facial appeal of Trustee's argument, however, this Court does not believe it has discretion to ignore the statutory mandate in § 1325(b)(3) and look instead to Schedules I and J (as it did prior to enactment of BAPCPA). See *In re Rezentes*, 368 B.R. 55, 59-60 (Bankr. D. Haw. 2007) ("eCAST argues that projected disposable income should be based on the debtor's actual expenses listed in Schedule J rather than the 'means test' expenses listed in Form B22C. This argument is without merit. . . . Congress' use of the term 'shall' in sections 1325(b)(3) and 707(b)(2) makes the use of the means test expenses mandatory for above-median debtors.")

B. IRS LOCAL STANDARD DEDUCTION FOR VEHICLES FOR WHICH DEBTORS HAVE EITHER A PAYMENT LOWER THAN THE IRS STANDARD OR NO PAYMENT

The main thrust of eCAST's Objection to Plan concerns the deductions Debtors have taken for their two vehicles, one of which is owned outright and other which is subject to a lien that amounts to \$67.00 per month spread over 60 months. eCAST insists that "Debtors are limited to the *lesser* of the actual ownership cost for their vehicle or the IRS Local Standard Allowance amount of \$471.00." (Objection to Plan, ¶ 53 (emphasis in original).) As a consequence, eCAST argues that Debtors are limited to one vehicle deduction in the amount of \$67.00 per month. (*Id.*, ¶ 51.)

eCAST cites several cases in support of its position that a debtor is limited to the lesser of IRS Standards or actual expenses. eCAST relies on *In re Rezendes*, 368 B.R. 55 (Bankr. D. Haw. 2007) for the proposition that “[D]ebtors cannot deduct IRS Local Standard amounts for expenses that they do not actually incur.” (Objection to Plan, ¶ 54.) The *Rezendes* debtors had moved twice to cheaper housing arrangements to reduce their housing expenses and, by the time they filed for bankruptcy relief, they were living with a relative. Consequently, as of the petition date, the *Rezendes* debtors’ living situation involved five adults and four children occupying a three bedroom house. *Rezendes*, 368 B.R. at 56-57. Although it held that debtors were limited to the lesser of their actual housing expense or the Local IRS Standard, the *Rezendes* court (which dealt with the same objection to confirmation by eCAST as is currently before this Court) noted that there was a split among the courts concerning whether the IRS Local Standards are mandatory if they apply to a debtor’s situation or whether the standards serve as a cap on the deduction that a debtor may take.³ Judge Robert Faris appeared to believe that the result

³In detailing the split of authority, the *Rezendes* court noted: “Some courts have held that the plain language of the statute provides that the local standard is a fixed allowance. See, e.g., *In re Enright*, 2007 Bankr. LEXIS 812, 2007 WL 748432, at *5 (Bankr. M.D. N.C. Mar. 6, 2007); *In re Grunert*, 353 B.R. 591, 594 (Bankr. E.D. Wis. 2006); *In re Haley*, 354 B.R. 340, 344 (Bankr. D. N.H. 2006); *In re Hartwick*, 352 B.R. 867, 868-69 (Bankr. D. Minn. 2006); [*In re*] *Farrar-Johnson*, 353 B.R. [224] at 230 [(Bankr. N.D. Ill. 2006)]; and *In re Fowler*, 349 B.R. 414, 418 [Bankr. D. Del. 2006].” *Rezendes*, 368 B.R. at 60. “Other courts have reached the opposite conclusion, holding (mostly in the context of vehicle ownership expenses) that debtors cannot claim deductions under the IRS local standard for expenses that they do not actually incur. See, e.g., *In re Caefsar*, 2007 WL 777821, at *5 (Bankr. W.D. La. Mar. 6, 2007); *In re Slusher*, 359 B.R. 290, 2007 Bankr. LEXIS 127, 2007 WL 118009, at *14 (Bankr. D.

was unfair;⁴ nonetheless, he decided that interpreting the IRS Local Standards as caps on deductions was more in keeping with Congressional intent. *Id.* at 61-62.

eCAST notes in its Reply that two recent District Court decisions reversed bankruptcy courts that allowed vehicle ownership expenses where no car payment was due. eCAST cites, with approval, *Fokkena v. Hartwick (In re Hartwick)*, 2007 U.S. Dist. LEXIS 51071 (D. Minn. August 20, 2007). The District Court in *Hartwick*, however, held:

Following IRS policy, if the debtor has no loan or lease payment obligation, then the vehicle ownership cost is not applicable and only the operating cost expenses applies; if the debtor has a loan or lease payment obligation, then both the ownership cost and the operating cost are applicable and are applied in the dollar amount specified by the IRS.

Id. at *12 (emphasis added).

Although the District Court's holding in *Hartwick* supports eCAST's argument concerning the vehicle that Debtors own free and clear, it undercuts eCAST's argument that Debtors are limited to

Nev. Jan. 17, 2007), at *14 (sic); *In re Devilliers*, 358 B.R. 849, 2007 Bankr. LEXIS 75, 2007 WL 92504, at *6 (Bankr. E.D. La. Jan. 9, 2007); *In re McGuire*, 342 B.R. 608, 613 (Bankr. W.D. Mo. 2006); *In re Carlin*, 348 B.R. 795, 798 (Bankr. D. Or. 2006); *In re Wiggs*, 2006 Bankr. LEXIS 1547, 2006 WL 2246432, at *2-3 (Bankr. N.D. Ill. 2006); and *In re Hardacre*, 338 B.R. 718, 728 (Bankr. N.D. Tex. 2006)." *Id.* at 61.

⁴Judge Faris acknowledged that debtors would be required to make larger plan payments because they moved into a too-small house in a "valiant and commendable effort to pay their creditors" and that it was unlikely that the debtors would want to live for the next five years in their current situation. "[I]n my view, chapter 13 (even under BAPCPA) does not necessarily require debtors to live in substandard housing and does not always prove that no kind deed goes unpunished." *Id.* at 62.

the lesser of the IRS Local Standard or their actual vehicle expense for the Mitsubishi. The *Hartwick* court specifically held that the IRS Local Standards do not apply if there is no loan or lease payment, but such Standards do apply if there is any loan amount owing - thus, holding that IRS Local Standards are fixed allowances, but only when a debtor has some amount of loan or lease obligation. This Court fails to understand the rationale behind such distinction. Why should a debtor be allowed to deduct the entire IRS Local Standard if he/she owes \$1.00 per month on a vehicle (calculated over 60 months) but be prohibited from taking any vehicle ownership deduction if the vehicle is owned free and clear? This Court believes that the District Court's decision in *Hartwick* highlights the difficulty in interpreting these Bankruptcy Code sections.

Despite some courts' decisions that debtors are entitled to take the lesser of the IRS Local Standards or their actual expenses, this Court finds no statutory support for this proposition. The Bankruptcy Code does not provide that the IRS Local Standards are to serve as caps rather than fixed amounts.⁵ In the instant case, there is no question that Debtors' current monthly income exceeds the amount set forth in § 1325(b)(3), which then requires that: "Amounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with

⁵ "The Bankruptcy Code does not say whether courts should follow the [Internal Revenue Manual] guidelines in determining projected disposable income of chapter 13 debtors." *Rezentes*, 368 B.R. at 59.

subparagraphs (A) and (B) of section 707(b)(2)[.]" 11 U.S.C. § 1325(b)(3) (West 2006) (emphasis added). Section 707(b)(2) provides:

The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. . . .

11 U.S.C. § 707(b)(2)(A)(ii)(I) (West 2006) (emphasis added).

Sections 1325(b)(3) and 707(b)(2) require Debtors to utilize the IRS Local Standards rather than their actual expenses for the vehicles they own. Consequently, this Court finds the reasoning in *In re Moorman*, 2007 Bankr. LEXIS 3269 (Bankr. C.D. Ill. Sept. 28, 2007) to be persuasive. The *Moorman* court, which had to decide whether debtors could take the IRS Local Standard deduction for a second vehicle that was owned free and clear, noted:

At least 41 courts have issued written opinions on this issue or on the related issue involving the availability of the deduction under similar facts for the Chapter 7 means test calculation. Twenty-four courts have allowed the deduction, while 17 courts, including two district courts, have denied the deduction. After considering many thoughtful, well-reasoned, and well-written opinions on both sides of the issue, this Court finds that the deduction should be allowed.

Id. at *1.

In holding that the deduction was proper, the *Moorman* court looked at the Internal Revenue Manual ("IRM") and analyzed the differences between the objectives of tax collection and bankruptcy protection. The court stated:

Presumably, the goal of the IRS employees using the IRM is to maximize revenue to the IRS without specific regard to taxpayers' other obligations to secured or unsecured creditors. Thus, the IRM and related Standards provide "caps" on the amount of secured debt payments which may be deducted when figuring what payments should be made to the IRS to pay delinquent taxes. . . . These caps are set without regard to the actual amounts a taxpayer may be obligated to pay secured creditors. . . .

Chapter 13 of the Bankruptcy Code, on the other hand, attempts to provide a structure for the repayment of all debts based on established priorities. . . . There are no caps on such expenditures included in the statutory formulae for calculating either Chapter 13 disposable income or the Chapter 7 presumption of abuse. . . .

Thus, this Court finds that, although Congress borrowed the National and Local Standards from the IRS for incorporation into BAPCPA, there is no reasonable basis to also borrow the IRS collection guidelines and methods found in the IRM for interpretation of BAPCPA.

Id. at *7.

At least two other courts in this district have also been persuaded that the IRS Local Standards are mandated as fixed allowances rather than being caps. *In re Crews*, 2007 Bankr. LEXIS 729 (Bankr. N.D. Ohio Feb. 23, 2007) considered the allowable deduction in a chapter 13 plan for a second vehicles owned free and

clear. Therein, Judge Arthur Harris held that the IRS Local Standards were fixed allowances.

The Court acknowledges that the Internal Revenue Manual does indicate that the transportation ownership standards are caps in the context of analyzing a taxpayer's ability to pay[.] . . . Nevertheless, section 707(b)(2)(A) of the Bankruptcy Code only incorporates the "Local Standards" contained in the Internal Revenue Manual, not all of the detailed collection procedures contained in the Internal Revenue Manual. *Accord In re Farrar-Johnson*, 353 B.R. at 231[.]

Id. at *14. See also *In re Billie*, 367 B.R. 586, 592 (Bankr. N.D. Ohio 2007) (Finding IRS local transportation standards to be fixed allowances in context of a chapter 7 means test even though a vehicle was owned free and clear.).⁶

Taking all conflicting arguments and opinions into consideration, this Court overrules eCAST's objections to Debtors' chapter 13 plan concerning the vehicle deductions. The Court finds that the IRS Local Standard deductions are fixed allowances rather than caps. Debtors are entitled to take the IRS Local Standard expense allowance for both vehicles - the Subaru (owned free and clear) and the Mitsubishi (actual loan expense lower than the IRS

⁶Compare the following cases, which hold that, when a debtor has no vehicle loan or lease payment, the IRS Local Standards are not applicable: *In re Slusher*, 359 B.R. 290, 310 (Bankr. D. Nev. 2007) ("[D]ebtor in this case cannot take a vehicle ownership deduction under the Local Standards for a vehicle for which he is making no loan or lease payments[.]"); *In re McGuire*, 342 B.R. 608, 613 (Bankr. W.D. Mo. 2006) ("Thus, if a debtor is not incurring expenses for the purchase or lease of a vehicle, the debtor cannot claim a vehicle ownership expense under the IRS Standards."); and *In re Hardacre*, 338 B.R. 718, 728 (Bankr. N.D. Tex. 2006) ("Because the Local Standards only provide for a deduction for automobiles that are subject to lease or purchase, they do not permit a debtor to claim an ownership deduction for a vehicle owned free and clear by the debtor.").

Local Standard).

C. DEBTORS' USE OF CURRENT MONTHLY INCOME VS. SCHEDULE I INCOME

eCAST also urges that Debtors' plan should not be confirmed because Debtors use their current monthly income from the means test to determine their projected disposable income. eCAST argues that "the income component of the projected disposable income calculation should be forward looking rather than historical." (Objection to Plan, ¶ 29.)

eCAST made this same argument in the *Rezentes* case. In that case, the court noted:

eCAST argues that the debtors' plan payments must be based on the income reported on Schedule I, rather than Form B22C. It is not clear why eCAST makes this argument, because the debtors' Form B22C income, upon which the debtors base their plan, is higher than their Schedule I income. In any event, the difference is only \$16 per month, so I need not reach this issue.

Rezentes, 368 B.R. at 59. In the instant case, however, because there is a significant difference of \$917.00 between the means test income and Schedule I income, a determination that Schedule I should be used instead of the means test would substantially affect the amount Debtors would be required to contribute to their chapter 13 plan.

eCAST argues, and Trustee agrees, that Schedule I, rather than the means test, is more appropriately used to determine Debtors' contributions to their chapter 13 plan.

Section 1325(b)(1)(B) provides that "all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan." 11 U.S.C. § 1325(b)(1)(B) (West 2006). The section goes on, however, to state: "For purposes of this subsection, the term 'disposable income' means current monthly income received by the debtor . . . less amounts reasonably necessary to be expended[.]" 11 U.S.C. § 1325(b)(2). The Bankruptcy Code does not define either "projected disposable income" or "disposable income," although "current monthly income" is defined in § 101.

The term "current monthly income" -

(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on -

(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii)

. . . and

(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent)

11 U.S.C. § 101(10A) (West 2006).

Many thoughtful courts have tried to parse through the language in § 1325(b)(1)(B) to determine if "projected disposable income" and "disposable income" have the same or different meanings. One of the first cases to analyze these terms was *In re Hardacre*, 338 B.R. 718 (Bankr. N.D. Tex. 2006), which concluded that "projected disposable income" meant something different from "disposable income." The court stated:

[S]trict application of section 101(10A)'s definition of "current monthly income" can have serious consequence in some cases. For example, if "current monthly income" as defined in section 101(10A) applies, a debtor who anticipates a significant enhancement of future income is provided strong incentive to file chapter 13 as soon as possible. The amount of money that she would be required to commit to the plan would be based upon her lower average income prior to filing. On the other hand, a debtor who finds herself in the unfortunate circumstance of having a lower income after filing her petition might find that she is unable to confirm a plan because she cannot devote to the plan a "projected disposable income" predicated upon her prepetition income.

The court believes that the term "projected disposable income" must be based upon the debtor's anticipated income during the term of the plan, not merely an average of her prepetition income. This conclusion is buttressed not only by the anomalous results that could occur by strictly adhering to section 101(10A)'s definition of "current monthly income," but because, taken as a whole, section 1325(b)(1) commands such a construction.

Id. at 722.

Likewise, *In re Slusher*, 359 B.R. 290 (Bankr. D. Nev. 2007),

reached the same result. After a thorough discussion of the history of § 1325(b) and an analysis of this section after enactment of BAPCPA, Judge Bruce Markell, examined the sense of the words chosen by Congress and held:

[T]he term "projected disposable income" as used in Section 1325(b)(1)(B) does not exist in isolation in the Bankruptcy Code. The term appears in five other places in the Code, none of which define [it] and only one of which refers back to the definition of "disposable income" provided in Section 1325(b)(2). See, e.g., 11 U.S.C. §§ 1129(a)(15)(B); 1222(a)(4); 1225(b)(1)(B); 1225(b)(1)(C); 1332(a)(4).

By contrast, other Bankruptcy Code sections use the term "disposable income" without the word "projected," and these references often incorporate the definition in Section 1325(b)(2). See, e.g., 11 U.S.C. §§ 527(a)(2)(C); 528(c)(1); 541(b)(7); 1322(d)(2)(F). Congress' choice to use both "projected disposable income" and "disposable income" in the Code indicates an intent to apply different meanings to the two terms. Given this, it is common sense that while "disposable income" may explicitly refer to the past, "projected disposable income" undeniably looks to the future.

Id. at 297.

This Court agrees that "projected disposable income" and "disposable income" do not have the same meaning and that "projected disposable income" necessarily requires the use of Debtors' disposable income at the time of confirmation rather than the historical six month average. As a consequence, The Court sustains eCAST's objection to Debtors' plan on the basis that Debtors utilized current monthly income from the means test to determine the amount of income required to fund the chapter 13

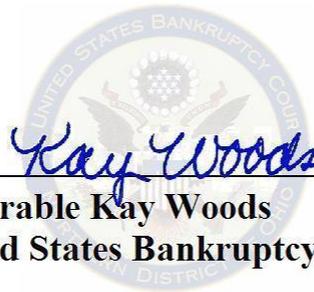
plan.

III CONCLUSION

For the reasons set forth above, this Court finds that eCAST's objection should be overruled, in part, and sustained, in part. An appropriate order will follow.

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IT IS SO ORDERED.



**Dated: November 26, 2007
04:21:52 PM**

**Honorable Kay Woods
United States Bankruptcy Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO**

IN RE:	*	CASE NUMBER 07-41250
	*	
MICHAEL GEORGE MARINECZ and	*	CHAPTER 13
CATHERINE ANN MARINECZ,	*	
	*	HONORABLE KAY WOODS
	*	
Debtors.	*	
	*	
	*	

ORDER OVERRULING, IN PART, AND SUSTAINING, IN PART,
eCAST'S OBJECTION TO CONFIRMATION OF PLAN

For the reasons set forth in this Court's Memorandum of Opinion Regarding eCAST's Objection to Confirmation, entered this date, this Court finds that eCAST's Objection to Confirmation of Chapter 13 Plan (Doc. # 17) is overruled, in part, and sustained, in part.

The Objection is overruled to the extent that Debtors Michael George Marinecz and Catherine Ann Marinecz ("Debtors") are entitled to claim the IRS Local Standard vehicle ownership allowance for both vehicles - the Subaru that they own outright and the Mitsubishi for which they have a loan payment less than the IRS Local Standard.

The Objection is sustained to the extent Debtors used current monthly income from the means test to determine the amount of income required to fund the chapter 13 plan, rather than the income listed on Schedule I.

IT IS SO ORDERED.

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