

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



A blue ink signature of Mary Ann Whipple, written in a cursive style.

Mary Ann Whipple  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re:	)	Case No. 08-34090
	)	
Verla M. Cole,	)	Chapter 13
	)	
Debtor.	)	
	)	JUDGE MARY ANN WHIPPLE

**ORDER SUSTAINING OBJECTION TO AND DENYING  
CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN**

This case is before the court on the Chapter 13 Trustee's Objection to Confirmation of Debtor's Chapter 13 Plan ("Objection") [Doc. # 32]. Debtor has filed no response. The issue presented is whether Debtor can subtract operating expenses from gross rent and other real property income in calculating current monthly income ("CMI") in order to determine the applicable monthly commitment period of her Chapter 13 plan. For the reasons that follow, the court concludes that she cannot.

Debtor filed her Chapter 13 petition on August 1, 2008. She also filed a Chapter 13 plan that proposes to pay unsecured creditors a 15.9% dividend over three years. The length of her plan is based upon her Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Official Form B22C), a form required to be filed with her petition and that she correctly completed as directed by the form. *See* Fed. R. Bankr. P. 9009. On line 21 of Form B22C, Debtor reports an annualized CMI of \$38,527.44, which includes only her gross wages, salary, tips, bonuses, overtime and commissions. Although Debtor also reported on line 4a. of Form 22 that she had gross

monthly rental and real property income of \$925, she deducted her monthly operating expenses of \$1,246 from that figure as directed at line 4b. of Form 22C. As a result, none of her rent and other real property income is included in her CMI calculation. Because the reported CMI of \$38,527.44 fell below the applicable median income of \$40,168.00, she reported at Part II of Form B22C an applicable commitment period for her Chapter 13 plan of three rather than five years. *See* 11 U.S.C. 1325(b)(4) (providing that the “applicable commitment period” is three years unless the debtor’s annualized CMI is greater than the applicable median family income, in which case, the “applicable commitment period” is five years).

The Chapter 13 Trustee objects to the three-year, 15.9% plan, arguing that Debtor’s CMI was not properly calculated. According to the Trustee, the calculation set forth in Form B22C conflicts with the provisions of the Bankruptcy Code in that Debtor’s operating expenses should not be deducted from her gross rent and real property income in determining CMI. If this deduction is eliminated from the CMI calculation, Debtor’s CMI is above the applicable median income, resulting in an applicable commitment period of five years rather than three years.

#### **LAW AND ANALYSIS**

The starting point for applying the Bankruptcy Code in determining the proper calculation of CMI is the existing statutory text. Where the language of the statute is clear, the court’s function is to enforce the statute according to its terms unless the disposition required by its terms is absurd. *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004); *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000). In determining whether the statutory language is clear, the court must take a holistic approach. *Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 60 (2004). “A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme-because the same terminology is used elsewhere in a context that makes its meaning clear. . . .” *Id.*

The Bankruptcy Code defines CMI as the “average monthly income from all sources that the debtor receives . . . without regard to whether such income is taxable income,” that is derived during the 6-month period before commencement of the case. 11 U.S.C. § 101(10A). The Code does not, however, define “income.” Nevertheless, as one court concluded, “§ 101(10A) reflects a clear congressional intent that Tax Code concepts for determining taxable income are inapplicable to a determination of current monthly income.” *Drummond v. Wiegand (In re Wiegand)*, 386 B.R. 238, 241 (B.A.P. 9<sup>th</sup> Cir. 2008). The court cannot, therefore, rely on the calculation of taxable income, which would permit the deduction of business or operating expenses from a debtor’s gross rent and real property income, in determining the debtor’s “average monthly income” under § 101(10A).

To the extent that § 101(10A) is not clear as to whether such deductions are permitted in determining CMI, the definition of “disposable income” in § 1325(b)(2) provides such clarity. That section provides that “disposable income means current monthly income received by the debtor . . . less amounts reasonably necessary to be expended . . . (B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.” 11 U.S.C. § 1325(b)(2). The fact that Congress specifically identified business expenses as being deductible from CMI in determining disposable income clearly indicates that such expenses are not deducted in calculating CMI in the first place. *See id.* at 242; *In re Arnold*, 376 B.R. 652, 654 (Bankr. M.D. Tenn. 2007); *In re Sharp*, 395 B.R. 207, 215 (Bankr. C.D. Ill. 2008); *In re Bembenek*, Case No. 08-22607-svk, 2008 Bankr. LEXIS 3003, 2008 WL 2704289 (Bankr. E.D. Wis. July 2, 2008). *But see In re Featherston*, Case No. 07-60296-13, 2007 Bankr. LEXIS 4578, 2007 WL 2898705 (Bankr. D. Mont. Sept. 28, 2007).

Although Form B22C permits the deduction of business and operating expenses “above the line” in calculating CMI, the court agrees that such deductions are plainly and unambiguously not permitted under the applicable provisions of the Bankruptcy Code. Where an Official Form conflicts with the Bankruptcy Code, as in this case, the statute, not the form, must govern. *In re Arnold*, 376 B.R. at 653; *In re Wiegand*, 386 B.R. at 241; *see* Fed. R. Bankr. P. 9009 (“The forms shall be construed to be consistent with these rules and the Code.”). Debtor has not identified any way in which, and the court cannot find that, this is an absurd result.

**THEREFORE**, for the foregoing reasons, good cause appearing,

**IT IS ORDERED** that the Chapter 13 Trustee’s Objection [Doc. # 32] be, and hereby is, **SUSTAINED**. Confirmation of Debtor’s proposed Chapter 13 plan [Doc. #4] is **DENIED**.