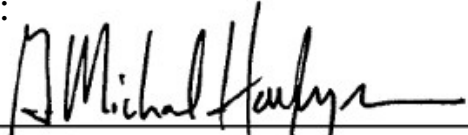




THE FOLLOWING ORDER
IS APPROVED AND ENTERED
AS THE ORDER OF THIS COURT:

DATED: December 1, 2016


G. Michael Halfenger
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In the matter:

Tinita Holmes,

Case No. 15-31329-GMH

Debtor.

Chapter 13

**DECISION AND ORDER
SUSTAINING TRUSTEE'S OBJECTION TO CONFIRMATION**

Tinita Holmes is an above-median chapter 13 debtor. Her mother lives with her. CM-ECF Doc. No. 33 at 3. Mother receives monthly social security benefits of approximately \$400, and Holmes's schedule I indicates that Holmes regularly receives \$400 per month from "Mother's social security". CM-ECF Doc. No. 1 at 26; CM-ECF Doc. No. 33 at 3. Holmes says mother has sole control of her social security benefits and uses the \$400 "entirely to pay for her own medical and prescription benefits". CM-ECF Doc. No. 33 at 3, 6.

The chapter 13 trustee objects to confirmation of Holmes's plan. The trustee argues that Holmes improperly ignores funds received from her mother in calculating her current monthly income. As a result, the trustee says, Holmes's plan does not propose to pay all of her projected disposable income to her unsecured creditors as required by 11 U.S.C. §1325(b)(1)(B). CM-ECF Doc. Nos. 20; 32 at 3-4.

I

Section 1325(b)(2) defines “disposable income”. For debtors like Holmes who aren’t engaged in business “disposable income” means (excluding inapplicable caveats) “*current monthly income* received by the debtor . . . less amounts reasonably necessary to be expended—(A)(i) for the maintenance or support of the debtor or a dependent of the debtor”. 11 U.S.C. §1325(b)(2)(A)(i) (emphasis added). The present dispute turns on the Bankruptcy Code’s definition of “current monthly income”.

Current monthly income includes the debtor’s income from all sources during the six months preceding the bankruptcy case:

“current monthly income” . . . 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 [that] income is taxable income, derived during the 6-month period ending on [for present purposes the last day of the month before the debtor filed the case].

11 U.S.C. §101(10A)(A)(i) (emphasis added). The debtor’s current monthly income also includes regular payments of the debtor’s or a dependent’s household expenses made by “any entity other than the debtor”, except payments received from social security (and other benefit programs that are not at issue here and are ignored for ease of explication):

“current monthly income” . . . (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 . . . but *excludes benefits received* under the Social Security Act[.]

11 U.S.C. §101(10A)(B) (emphasis added). Individuals—including mothers—are “entities” for purposes of the Bankruptcy Code. See 11 U.S.C. §101(15) & (41).

II

The trustee argues that the \$400 mother regularly contributed to Holmes’s household expenses must be included in calculating Holmes’s current monthly income under §101(10A)’s plain text. CM-ECF Doc. No. 32 at 3-4; see also CM-ECF Doc. No. 1 at 26. The statutory exclusion of social security benefits is irrelevant, says the trustee, because the contributions to household expenses were made by mother and not from an entity disbursing benefits under the Social Security Act. CM-ECF Doc. No. 32 at 3-7.

Holmes contends that mother used the \$400 to pay mother's "own medical and prescription benefits" (CM-ECF Doc. No. 33 at 3); thus, she reasons, neither she nor her household received the \$400 or benefited from it. CM-ECF Doc. No. 33 at 2-8. Holmes argues that §101(10A)(B) excludes benefits mother received under the Social Security Act from the calculation of Holmes's current monthly income. CM-ECF Doc. No. 33 at 3-6.

III

A

Mother's \$400 contribution must be included in the calculation of Holmes's current monthly income regardless of whether mother regularly contributed money to Holmes or only paid her own household expenses. If, as the trustee contends, mother regularly contributed \$400 to Holmes's household generally, the money would be income Holmes received on a monthly basis under subsection (A) of §101(10A). If, on the other hand, mother is Holmes's dependent, as Holmes contends, and mother only used the \$400 to pay her own monthly prescription expenses, then the money is included under subsection (B), because it is an amount that another entity (that is, mother) paid on a regular basis for the household expenses of Holmes's dependent (again, mother). Holmes asserts that mother is her dependent; the trustee does not contest that assertion.

The \$400 is thus included in Holmes's current monthly income unless subsection (B)'s exclusionary provision applies. Section 101(10A)(B)'s exclusionary provision is most reasonably understood to apply only to social security benefits received by a debtor or, in a joint case, received by the debtor and the debtor's spouse. This understanding best fits the section considered in its entirety.

Subsection (A) of §101(10A) defines current monthly income as "the average monthly income from all sources that *the debtor receives* (or in a joint case the debtor and the debtor's spouse receive)". §101(10A)(A) (emphasis added). Subsection (B) directs that the income the debtor receives "*includes* any amount paid by any entity other than the debtor . . . on a regular basis for the household expenses of the debtor or the debtor's dependents". §101(10A)(B) (emphasis added). Subsection (B) thus treats other persons' payments of household expenses for the debtor or her dependents as income *received by the debtor*. This makes sense. Paying the debtor and paying her household expenses have similar economic effects.

In this context subsection (B)'s "excludes benefits received" provision is best understood to refer to benefits *received by the debtor* (or by the debtor's spouse in a joint case). §101(10A)(B). Subsection (B) has two parts. Part one *includes* in the "average monthly income from all sources that the debtor receives" (§101(10A)(A)) "any amount paid by any entity other than the debtor . . . on a regular basis for the household expenses of the debtor or the debtor's dependents" (§101(10A)(B)). Part two *excludes* from "average monthly income from all sources that the debtor receives" (§101(10A)(A)) "benefits *received* under the Social Security Act" (§101(10A)(B) (emphasis added)). Part one of subsection (B) is aggregating—it includes other entities' regular payments of household expenses as part of subsection (A)'s "income from all sources that the debtor receives". Part two of subsection (B) is exclusionary—it excludes certain benefits from §101(10A)'s general inclusion of all income the debtor received, directly or indirectly, from all sources. The excluded benefits, therefore, are benefits paid to the debtor (and to the debtor's spouse in a joint case).¹ §101(10A)(A).

Section 101(10A) thus includes the \$400 in Holmes's current monthly income if mother either regularly contributed the \$400 to Holmes or regularly used the \$400 to pay household expenses of Holmes or Holmes's dependents. Section 101(10A)(B) does not exclude the \$400 in either instance because Holmes received an economic benefit from mother, not from a government entity disbursing social security benefits.

¹ At least one court has read §101(10A)'s exclusionary provision to apply to non-debtor social security benefits based on a comparison with 11 U.S.C. §522(d)(10)'s text. See, e.g., *In re Miller*, 445 B.R. 504, 506–07 (Bankr. D. S.C. 2011). Section 522(d)(10) provides an exemption for "[t]he debtor's right to receive—(A) a social security benefit . . ." 11 U.S.C. §522(d)(10)(A). The *Miller* court reasoned that §101(10A)'s exclusionary provision does not specify that it is the debtor's social security benefits that are excluded, unlike §522(d)(10), which states that the exemption applies to the debtor's right to receive a social security benefit. *In re Miller*, 445 B.R. at 507. As explained above, however, if one considers §101(10A) in its entirety, it too addresses only sources of income received by the debtor or the debtor's spouse in a joint case. In context, §101(10A) is best understood to refer to social security benefits received by a debtor, just like §522(d)(10). The lack of parallel construction in a section addressing exemptions rather than definitions does not warrant a different reading. As the trustee argues, a construction of §101(10A) that does not limit the exclusionary provision to benefits received by debtors yields unjustifiably counterintuitive results. For example, two debtors who both regularly receive \$500 per month from their grandmothers would have different current monthly incomes if one grandmother took the \$500 from her social security benefits and the other took the \$500 from an IRA withdrawal—even if both grandmothers received the same amount of social security and had the same total income. This incongruous result is not justified by the text of §101(10A).

B

The Social Security Act's anti-assignment provision does not require a different result. Section 407(a) of the Social Security Act protects Social Security Act payments from "the operation of" the bankruptcy laws:

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

42 U.S.C. §407(a). Section 407(a) does not prevent bankruptcy law from regulating the amount a chapter 13 debtor who does *not* receive benefits under the Social Security Act must pay unsecured creditors.

Section 407's inapplicability is obvious if the \$400 is included in Holmes's current monthly income because Holmes regularly received that amount from mother. Money Holmes receives from mother is not money paid under the Social Security Act. In this scenario, the government isn't paying Holmes social security benefits, and mother isn't transferring her right to future social security benefits to Holmes.

Section 407 is also inapplicable if the \$400 is included in Holmes's current monthly income because mother made regular payments of household expenses for Holmes or her dependents. Mother's social security benefits enabled mother to pay these expenses, which conveyed an economic benefit on Holmes. But mother conveyed this benefit, not the Social Security Act. If mother had spent her social security benefits on things other than household expenses of Holmes or Holmes's dependents, then mother's use of her social security benefits would not affect Holmes's current monthly income.

Section 101(10A) does not make mother's social security benefits subject to the "operation of" the Bankruptcy Code by requiring Holmes to account for the economic benefit mother provided when calculating Holmes's current monthly income. The Bankruptcy Code does not compel mother to use her social security benefits to pay Holmes's household expenses. The Bankruptcy Code does not require mother to do anything: Mother is not a debtor. And nothing in the Social Security Act prevents the Bankruptcy Code from compelling Holmes—a *debtor* seeking the Bankruptcy Code's protections—to use *her* income—none of which comes to her by operation of the Social Security Act—to pay *her* creditors. See *Neavear v. Schweiker (In re Neavear)*, 674 F.2d 1201,

1206 (7th Cir. 1982) (“We thus conclude that section [4]07 provides an exemption from the bankruptcy laws only for the benefits of social security recipients”).²

IV

The trustee’s objection is sustained.

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² The parties dispute only the narrow question of whether Holmes’s current monthly income includes an additional \$400 based on mother’s use of her social security benefits. Whether the Bankruptcy Code ultimately requires Holmes to pay unsecured creditors more than her plan currently provides is a question for another day. See 11 U.S.C. §1325(b)(3) (incorporating §707(b)(2)(A) & (B) in determining projected disposable income of above-median-income debtors, like Holmes); see also §707(b)(2)(A)(ii)(I) & (II) (addressing reasonable expenses of the debtor, the debtor’s dependents, the debtor’s household members and certain eligible immediate family members).