SO ORDERED.

SIGNED this 7 day of November, 2017.

Stephani W. Humrickhouse
Stephani W. Humrickhouse
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

IN RE:

JEANNETTE AUGER GONYO

DEBTOR

CASE NO.
17-00870-5-SWH
CHAPTER 7

ORDER GRANTING MOTION TO DISMISS

The matter before the court is the motion to dismiss pursuant to 11 U.S.C. §§ 707(b)(1) and (b)(3) filed by the Bankruptcy Administrator on May 3, 2017, Dkt. 15. A hearing took place on August 9, 2017, at which the court took the matter under advisement. After consideration of the pleadings, arguments of counsel, and evidence presented at the hearing, the motion will be granted.

BACKGROUND

Jeannette Auger Gonyo ("Mrs. Gonyo" or the "Debtor") filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code on February 23, 2017 (the "Present Case"). On March 31, 2017, the Bankruptcy Administrator noted that she reviewed all of the Debtor's materials and determined that the case should be presumed to be an abuse pursuant to § 707(b). As a result, the

Clerk of Court issued a statement of presumed abuse on April 3, 2017, Dkt. 10. The Bankruptcy Administrator filed a motion for production of documents pursuant to Federal Rule of Bankruptcy Procedure 2004 on April 7, 2017, Dkt. 12, and the court issued an order granting the 2004 motion on April 11, 2017, Dkt. 13. The chapter 7 trustee filed a report of no distribution on April 25, 2017, stating that the § 341 meeting of creditors was conducted and that no non-exempt assets were available to administer for the estate. The Bankruptcy Administrator filed the instant motion on May 3, 2017, Dkt. 13. Mrs. Gonyo filed a response on May 30, 2017, Dkt. 18. Prior to the hearing, the Bankruptcy Administrator conducted an oral examination of Mrs. Gonyo and her non-filing spouse pursuant to Federal Rule of Bankruptcy Procedure 2004.

Mrs. Gonyo previously filed a joint petition for relief with her spouse under chapter 7 of the Bankruptcy Code in this district on April 28, 2008 (the "First Case"). *See* Case No. 08-02848-8-ATS. A discharge was granted in the First Case on August 6, 2008, which discharged a total of approximately $115,000 of unsecured debt. Mrs. Gonyo filed her present petition for relief as a single debtor. Her schedules show that she and her spouse own real property in Holly Springs, North Carolina valued at $235,000 as tenants by the entirety, which is encumbered by a mortgage in the amount of $131,610. In addition, Mrs. Gonyo jointly owns a 2003 Hornet M-35 recreational vehicle (the "RV") with her husband, which she claimed as fully exempt. Her other assets consist of personal property, including ordinary furniture, clothing, tools, and appliances. Her schedules indicate no unsecured priority claims and $37,346.55 in general unsecured claims. On Schedule I, Mrs. Goyno listed that she is employed by Starbucks as a part-time barista and earns approximately $443.34 in monthly net income from her position. Her Schedule I also indicates that Mr. Gonyo is employed with Verizon Communications and earns $5,219.90 in monthly net income. On Line 13

of Schedule I, Mrs. Gonyo noted that "[her] business may become profitable," and "there is variation in regard to income."

Mrs. Gonyo's Schedule J indicates that three dependent children, ages 15, 19, and 21, reside with her and her non-filing spouse**.** On Schedule J, she lists the following as "other" expenses: (1) husband's car payment; (2) husband's second car payment; (3) pet expenses; (4) education necessary for employment; (5) recreational vehicle lot lease; (6) husband's credit card debt service; (7) Wake Tech Community College expenses; and (8) daughter's soccer expenses. In total, her "other" expenses amount to $1,704.16 on a monthly basis. After subtracting all expenses, Mrs. Gonyo's Schedule J shows net monthly income of negative $619.67.

As a chapter 7 debtor, Mrs. Gonyo was required to complete Official Form 122A-1 in order to calculate her current monthly income ("CMI"), as defined by 11 U.S.C. § 101(10A). Her CMI, as amended by the stipulation of facts offered at the hearing, is $9,321.41 ($441.48 earned by Mrs. Gonyo each month + $8,859.93 earned by Mr. Gonyo each month). As a result, Mrs. Gonyo qualified as an above-median debtor in the state of North Carolina and was required to complete Official Form 122A-2 to determine whether a presumption of abuse pursuant to § 707(b)(1) existed. On Form 122A-2, Mrs. Gonyo begins by listing her CMI. She then reduces her CMI to account for the "marital adjustment" in accordance with the form's instructions, which provide "adjust your [CMI] by subtracting any part of your spouse's income *not used* to pay for the household expenses of you or your dependents." She includes the following line items as part of the "marital adjustment" deduction on Line 3 of Form 22A-2:

Vehicles and Credit Cards:[1]	$886.00
Wake Tech:	$333.00

[1] Mr. Gonyo owns four vehicles, all of which are regularly used by the household. In his testimony, he explained that he routinely charges utility expenses to his individual credit cards. No objection to the "vehicles and credit cards" marital adjustment was raised, and the court therefore will not consider the deduction's propriety.

401(k):[2]	$977.68
Daughter's soccer:[3]	$300.00
Lot lease for RV:	$458.00

As a result of the marital adjustment, Mrs. Gonyo's CMI is reduced to $6,366.73. After deducting all allowed expenses pursuant to the Internal Revenue Service National and Local Standards as well as the additional expense deductions for health and disability insurance, Mrs. Gonyo's means test results in monthly disposable income in the amount of *negative* $855.15.

On her Official Form 107: Statement of Financial Affairs ("SOFA"), Mrs. Gonyo lists sole ownership of a North Carolina corporation named Outcome Recovery Services, Inc. (the "ORS"). She values her ownership interest in ORS at $500. At the hearing, Mrs. Gonyo explained that she formed ORS in February of 2009 in order to operate a tax return preparation business. However, the business was not profitable and she testified that she intends to dissolve the corporation in the near future. She further stipulated to the inclusion of $20.00 per month in net income derived from ORS. While not listed in her schedules, Mrs. Gonyo testified that she formed another North Carolina corporation in 2016 named GO5, Inc. ("GO5") with the intent of opening a restaurant franchise. However, she was unable to obtain the required financing for the franchise rights, and as a result, GOF never operated a business or generated any profit. She dissolved GO5 in early 2017.

[2] The parties presented a stipulation of facts at the hearing, which included an updated, increased deduction amount for Mr. Gonyo's monthly 401(k) contribution.

[3] On Form 122A-2, Mrs. Gonyo combined the daughter's soccer expense and lot lease expense for a total of $758.00, presumably because only four lines are provided on the form for a debtor to list the non-household expenses of his or her non-filing spouse. At the hearing and on Schedule J, Mrs. Gonyo assigned $300 of this figure as representing expenses relating to soccer and the remaining $458 as an expense for the lot lease.

In her motion to dismiss,[4] the Bankruptcy Administrator primarily contends that the certain expenses contained in Mrs. Gonyo's "marital adjustment" calculation are improper and that disallowing those deductions would result in an additional $1,091 in monthly disposable income, which would trigger a presumption of abuse pursuant to § 707(b)(1). The Bankruptcy Administrator also alleges that based upon a review of bank records, all tax refunds and "incentive pay" bonuses received by Mrs. Gonyo's non-filing spouse should be included in the Debtor's CMI calculation.

In the alternative, the Bankruptcy Administrator argues that Mrs. Gonyo's filing constitutes an abuse of the bankruptcy process pursuant to § 707(b)(3). She bases this contention on the following: (1) Mrs. Gonyo's failure to include her non-filing spouse's income tax refunds and bonuses on her schedules and in her initial CMI figure demonstrates bad faith pursuant to § 707(b)(3)(A); and (2) the totality of Mrs. Gonyo's financial circumstances, including her previous filing and accumulation of nearly $40,000 in unsecured credit card debt in the eight years following the entry of discharge in the first case, constitutes abuses pursuant to § 707(b)(3)(B).

In her response, Mrs. Gonyo contends that the line-item marital adjustment expenses are "not necessary for day-to-day living" and therefore are not household expenses, such that they may be properly deducted from her CMI as part of the marital adjustment. She further denies all allegations of bad faith and abuse.

The issues before the court are, therefore: (1) whether Mrs. Gonyo must include her non-filing spouse's income tax refunds and employment bonuses in her CMI calculation; (2) whether the line-item expenses deducted as part of the "marital adjustment" are proper; and (3) whether the

[4] Based upon her current monthly income in the amount of $9,321.41, Mrs. Gonyo qualified as an above-median debtor in the state of North Carolina pursuant to § 707(b)(7)(A)(iii). The Bankruptcy Administrator's motion to dismiss is therefore properly before the court pursuant to § 707(b)(7).

totality of Mrs. Gonyo's financial circumstances demonstrate bad faith or otherwise demonstrate abuse. The Bankruptcy Administrator bears the burden of proof as the moving party. *In re Leggett*, No. 10-03383-RDD, 2011 WL 802806, at *3 (Bankr. E.D.N.C. Mar. 2, 2011) (citations omitted).

DISCUSSION

A. Section 707(b)(1) and Current Monthly Income

Section 707(b)(1) of the Bankruptcy Code provides that a court "may dismiss a [chapter 7] case filed by an individual debtor . . . or, with the debtor's consent, convert such a case . . . if it finds that the granting of relief would be an abuse of the provisions of [chapter 7]." 11 U.S.C. § 707(b)(1). A presumption of abuse arises if a debtor's "means test" calculation, as detailed in the formula contained in § 707(b)(2), demonstrates sufficient disposable income to repay debts and generate a return to creditors. *Id*. at § 707(b)(2); *see also In re Denzin*, 534 B.R. 883, 886 (Bankr. E.D. Va. 2015) (explaining that the means test contained in § 707(b)(2) serves to "distinguish the honest but unfortunate debtor who is entitled to chapter 7 relief from the honest but less unfortunate debtor who is capable of paying all or part of his debts"). Here, the Bankruptcy Administrator objects to two components of Mrs. Gonyo's means test calculation, the first being the failure to include all of Mr. Gonyo's income in her CMI figure, and the second being the improper deduction of regular household expenses as part of the means test marital adjustment.

Because CMI is the starting point for completing the means test calculation contained in § 707(b)(2), the court will first determine whether Mr. Gonyo's incentive pay bonuses from his employer and tax refunds must be included in Mrs. Gonyo's CMI. Pursuant to Form B22A's instructions and the definition contained in 11 U.S.C. § 101(10A), CMI is calculated by averaging a debtor's "monthly income for the six calendar months prior to the filing the bankruptcy case, ending on the last day of the month before the filing." 11 U.S.C. § 101(10A); *see also* FED. R.

BANKR. P. 1007(b)(4) ("an individual debtor in a chapter 7 case shall file a statement of current monthly income prepared as prescribed by the appropriate Official Form"). This period is colloquially referred to as the "lookback period." By definition, a debtor's CMI is therefore fixed on the petition date and does not fluctuate.

1. Inclusion of Incentive Pay in Current Monthly Income

In considering whether Mrs. Gonyo must include Mr. Gonyo's incentive pay as CMI, the court will begin with the relevant statutory provision, as the "starting point in discerning congressional intent is the existing statutory text." *Lamie v. U.S. Trustee*, 124 S.Ct. 1023 (2004); *see also Ransom v. FIA Card Servs., N.A.*, 131 S.Ct. 716, 723 (explaining that "interpretation of the Bankruptcy Code starts where all such inquiries must begin: with the language of the statute itself"). Here, § 101(10A)(A) makes clear that the term "current monthly income" means "the average monthly income from *all* sources that the debtor receives . . . without regard to whether such income is taxable income." 11 U.S.C. § 101(10A)(A). If an individual chapter 7 debtor is married, the non-filing spouse's income is included in CMI to the extent that it is "paid on a regular basis for household expenses of the debtor or the debtor's dependents." 11 U.S.C. § 101(10A)(B); *see also In re Quarterman*, 342 B.R. 647, 651 (Bankr. M.D. Fla. 2006) (explaining that "if income is not (1) expended regularly (2) on household expenses, then it is not included in the debtor's current monthly income").

The statute specifically excludes only Social Security Act benefits and payments to war crime and terrorism victims but does not address bonuses received from employers. *Id.* However, "income" is defined as "a gain or recurrent benefit . . . that derives from capital or labor." *In re Sanchez*, No. 06-40865, 2006 WL 2038616, at *2 (Bankr. W.D. Mo. 2006). Courts have consistently determined that employment bonuses are income and should be included in CMI

calculations. *See In re Miller*, 519 B.R. 819, 827 (B.A.P. 10th Cir. 2014) (including a bonus received during the lookback period without regard to when it was earned); *In re Meade*, 420 B.R. 291, 306 (Bankr. W.D. Va. 2009) (prorating an annual bonus received during the lookback period over twelve months and including the monthly average amount in CMI).

In this case, Mrs. Gonyo filed her petition for relief on February 23, 2017, and the relevant lookback period is therefore the period between August 1, 2016 and January 31, 2017. Her non-filing spouse earned and received incentive pay in the total amount of $8,824 during 2016 and incentive pay in the total amount of $7,658 for the period of January 2017 to July 2017. BA's Ex. D. Accordingly, he averaged $735.33 in incentive pay per month in 2016 and $1,094 per month during 2017. This pay was deposited with Mr. Gonyo's regular biweekly income into a joint checking account held by Mr. and Mrs. Gonyo. Based on Mr. Gonyo's testimony, the incentive pay was commingled with his regular earnings. Importantly, Mr. Gonyo explained that because the incentive pay was deposited into his joint checking account with Mrs. Gonyo, it was used for routine expenses of the household.

Based upon the term's plain meaning, the court finds that the incentive pay earned by Mr. Gonyo during the lookback period is income, as it represents a gain derived from labor. The testimony offered at the hearing established that this income was expended "on a regular basis for the household expenses of the debtor or the debtor's dependents" in accordance with § 101(10A)(B). As a result, the average monthly amounts of incentive pay earned by Mr. Gonyo must be accounted for in calculating Mrs. Gonyo's starting CMI figure.

2. Inclusion of Tax Refunds in Means Test Calculation

The Bankruptcy Administrator further objects to Mrs. Gonyo's failure to include tax refunds in her § 707(b)(2) calculation. Mr. and Mrs. Gonyo received a joint federal tax refund in

the amount of $4,442 for tax year 2015 and received a joint federal tax refund in the amount of $7,642 for tax year 2016 (the "2016 Refund"). Mrs. Gonyo contends that because the 2016 Refund was *actually received* outside of the lookback period in May of 2016, it need not be included on Schedule I or in her CMI calculation.

Line 16 of Official Form 22A-2 establishes the proper method to account for receipt of an annual tax refund in calculating adjusted CMI. It provides that if a debtor "expect[s] to receive a tax refund, you must divide the expected refund by 12 and subtract that number from the total monthly amount that is withheld to pay for taxes." In effect, this provision requires a debtor to prorate his or her annual tax refund into monthly installments and offset amounts refunded against any amounts regularly withheld in order to arrive at an accurate reflection of tax liability. *See In re Rudnik*, 435 B.R. 613, 614 (Bankr. D. Minn. 2010) (finding that "debtors are not entitled to arbitrarily select tax withholding [when completing Form 22A-2] . . . only actual tax liability can be used as the basis for the [means test] calculation"); *see also In re Hale*, No. 07-32744, 2007 WL 2990760, at *2 (Bankr. N.D. Ohio Oct. 10, 2007) (explaining that "income tax withholding is not the same as actual tax liability, and can be manipulated by taxpayers to produce excess withholding and a refund"). Line 16 prevents a debtor from deducting an excessive amount for monthly taxes in completing the means test, as a debtor's "overwithholding of taxes skews the computation of CMI if tax refunds are not considered." *In re Barbour*, No. 09-00553-8-SWH, 2009 WL 3053697, at *6 (Bankr. E.D.N.C. Sept. 18, 2009). In addition, because income is earned and taxes are withheld throughout the lookback period, a debtor's adjusted CMI should reflect the net amount of taxes owed on a monthly basis.

In this case, Mrs. Gonyo initially deducted $1,840.57 on Line 16. However, prior to the hearing, Mrs. Gonyo and the Bankruptcy Administrator stipulated to an amended tax deduction of

$2,026.39, representing monthly deductions of both Mr. and Mrs. Gonyo. However, after considering the pay advices and income tax returns provided at the hearing, the court concludes that Mrs. Gonyo failed to account for her tax refund in completing the means test. Mr. and Mrs. Gonyo file a joint federal tax return annually. In 2015, the Gonyos received a refund of $4,442, and in 2016, the Gonyos received a refund in the amount of $7,642. BA's Ex. B. Based upon Mr. Gonyo's present withholding figures and the Gonyos' 2016 Refund, the court finds that $636.83 (the amount of the 2016 Refund divided by twelve) must be subtracted from the amended $2,026.39 withholding figure. Once reconciled, the proper deduction for actual tax liability on Line 16 is $1,389.56.[5]

B. Marital Adjustment Deductions

The Bankruptcy Administrator disputes three of Mrs. Gonyo's marital adjustment deductions: (1) expenses related to a lot lease for the RV; (2) tuition payments for two of Mr. and Mrs. Gonyo's dependent children; and (3) expenses related to Mr. and Mrs. Gonyo's daughter's participation in a club soccer league and varsity soccer team. If all three deductions are disallowed, a total of $1,091 would be added to Mrs. Gonyo's CMI, which would result in sufficient positive disposable income such that a presumption of abuse arises.

In calculating CMI, a debtor must include "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." 11 U.S.C. § 101(10A)(B) (emphasis added). Conversely, a non-filing spouse's income may be excluded to the extent that it used for non-household expenses. Line 3 of Official Form 122A-2 accounts for this exclusion and instructs a debtor to "adjust your [CMI] by subtracting any part of

[5]No evidence was presented regarding Mr. and Mrs. Gonyo's state tax liability or refund. While the court is concerned as to what effect the inclusion of monthly state tax liability may have on Mrs. Gonyo's means test calculation, the court lacks sufficient information to make any determination and therefore will exclude it from its analysis.

your spouse's income *not used* to pay for the household expenses of you or your dependents." Accordingly, "the key inquiry for determining the propriety of a marital adjustment . . . is the extent to which a non-filing spouse's income is not regularly contributed or dedicated to the household expenses." *In re Vollen*, 426 B.R. 359, 370 (Bankr. D. Kan. 2010). The determination of whether a given deduction qualifies as a household expense "is necessarily fact-specific and subject to interpretation." *In re Travis*, 353 B.R. 520, 526 (Bankr. E.D. Mich. 2006).

The Bankruptcy Code does not define the terms "household" or "expense." In interpreting an undefined term, a court is to "construe it in accord with its ordinary or natural meaning." *Smith v. United States*, 508 U.S. 223 (1993). The ordinary meaning of "household" is "a family living together" or "a group of people who dwell under the same roof." *Black's Law Dictionary* (10th ed. 2014). The term "expense" is defined as "an expenditure of money, time, labor, or resources to accomplish a result." *Id.* Taken together, the ordinary meaning of "household expense" is an expenditure made in support of those individuals dwelling under the same roof as a debtor. For purposes of § 101(10A)(B), it therefore follows that a debtor may only "adjust" his or her CMI and deduct those expenditures made by a non-filing spouse that *do not* support, benefit, or otherwise affect household members.

By definition, "household expenses" vary considerably amongst debtors. A common expense incurred in support of a household by one debtor may not appear in another case. Accordingly, the inquiry as to whether a given expenditure qualifies as a household or non-household expense should be flexible in order to permit a court to consider each debtor's individual circumstances. Several courts have opined on the meaning of "household expenses" as it is interpreted for § 101(10A) purposes and determined that expenses that are "*purely personal* in character to the non-debtor spouse" may be deducted as part of the marital adjustment, "thereby

decreasing a debtor's disposable income." *In re Rable*, 445 B.R. 826, 829 (Bankr. N.D. Ohio 2011) (emphasis added); *see also In re Montalto*, 537 B.R. 147, 155 (Bankr. E.D.N.Y. 2015) (denying a marital adjustment deduction for expenses that were not "purely personal" to the non-filing spouse). However, in certain cases, the "purely personal" inquiry may prove too restrictive and fail to permit a debtor from claiming deductions for non-household expenses.

Mrs. Gonyo argues that the term "household" is narrow and strictly limited to those expenses that specifically affect the "day-to-day functioning" of a debtor's home. She bases this contention on language contained in *In re Gregory*, No. 10-09739-8-JRL, 2011 WL 5902884 (Bankr. E.D.N.C. Aug. 17, 2011), *aff'd sub nom. Bankr. Adm'r v. Gregory*, 471 B.R. 823 (E.D.N.C. 2012). In *Gregory*, a chapter 7 debtor owned two houses with her non-filing husband by tenancy by the entirety but only used one of the properties as a primary residence. She sought to deduct various renovation expenses related to the second property, which was otherwise vacant and completely unused, as part of the marital adjustment. In interpreting § 101(10A), the *Gregory* bankruptcy court explained that the "ordinary, contemporary, and common meaning of 'household' only includes one's primary residence and those that live in that household." *Gregory*, 2011 WL 5902884, at *3. Using this definition, the *Gregory* court concluded that the expenses related to the second house were "non-household" and therefore properly deducted as part of the marital adjustment. In reaching its decision, the Gregory court reasoned that "if the non-filing spouse were to stop making the . . . payment related to the former residence, it would not affect the day-to-day functioning of the debtor's household." *Id.* On appeal, the United States District Court for the Eastern District of North Carolina affirmed the bankruptcy court's decision and explained that:

> [The debtor's] husband's payments were in the nature of investments and did not have meaningful nexus to [the debtor's] household expenses . . . given the . . . lack of factual nexus between these payments and the day-to-day functioning of [the debtor's] household, the bankruptcy court's analysis . . . is affirmed.

Bankr. Adm'r, 471 B.R. at 826.

Mrs. Gonyo's reliance on *Gregory* is misplaced. The marital adjustment deduction at issue in *Gregory* related to investment property expenses, which clearly bore no "meaningful nexus" to the functioning of the debtor's household, which was defined by the bankruptcy court as "one's primary residence and those that live in that household." *Gregory*, 2011 WL 5902884, at *3. In contrast, the deductions at issue in the present case differ materially, as they represent expenditures that are directly connected to the regular operations of Mrs. Gonyo's household.

The court agrees with *Gregory* in part, in that the nexus between the payments at issue and the day-to-day functioning of a household is instructive. However, this consideration is not necessarily dispositive, as the household expense inquiry must be analyzed in light of a debtor's particular circumstances. On its face and based upon the plain meaning of the terms, a "household expense" is one that supports a debtor's primary residence and those individuals residing in the primary residence. In this case, Mrs. Gonyo claimed a household size of five in completing her means test, and her IRS National and Local Standards deductions are based on this figure. No party objects to her household size.[6] It follows that expenditures relating to the ongoing support of and care for the five claimed individuals may facially constitute household expenses. However, this does not complete the inquiry, as the court must further analyze the nature and character of each claimed deduction in order to properly classify it as "household" or "non-household."

[6] Official Form 122A-2 requires a debtor to list the "number of people who could be claimed on your federal income tax return, plus the number of any additional dependents whom you support." In this case, the number of people for means test purposes is equal to Mrs. Gonyo's household size.

1. Recreational Vehicle Lot Lease and Utilities

The Bankruptcy Administrator first objects to the marital adjustment deduction for expenses related to an RV jointly owned by Mrs. Gonyo and her non-filing spouse. Specifically, Mrs. Gonyo seeks to claim a marital adjustment deduction of $458 for lease payments for an RV park in Emerald Isle, North Carolina. At the hearing, Mr. and Mrs. Gonyo testified extensively about the typical usage of the RV. Both individuals confirmed that the RV is used approximately one week per year in July and two weekends during the rest of the year for family vacations, but it remains parked at the Emerald Isle park year round. Mrs. Gonyo contends that cancellation of all lease and utility payments would not disrupt the daily functioning of her household, and the RV expenses therefore cannot be classified as "household" in nature.

The court is unpersuaded by this contention. The inquiry for whether a given expense should be classified as "household" or "non-household" does not solely turn on whether an interruption of payments of the disputed expense would disrupt the "day-to-day functioning" of a debtor's home. *See discussion supra.* This particular consideration may aid a court in determining the nature of a disputed expense but is not controlling. Instead, the court must determine the character of an expense in light of the statutory language of § 101(10A) and based upon the particular facts of a debtor's case. *See In re Travis*, 353 B.R. at 526 (explaining that "because of the impact of the . . . marital adjustment calculation on a debtor's ability to remain in bankruptcy, courts have an obligation to scrutinize challenges to [the marital adjustment] very carefully").

Here, Mr. and Mrs. Gonyo jointly own the RV. Mr. Gonyo makes an annual lease payment to an RV park on the North Carolina coast, which enables the entire household to use the RV for vacation purposes during the summer. While Mr. Gonyo is solely contractually liable on the lease, he makes the payment from a joint checking account held by himself and Mrs. Gonyo. At the

hearing, Mr. Gonyo explained that there were additional monthly costs associated with the RV, such as utilities. He estimated these costs to average approximately $50 per month. All five members of the household derive a benefit from the lease payments in the form of an annual vacation to the RV and lot. In addition, Mr. and Mrs. Gonyo explained that the RV is used only by the collective household, and no household member uses the RV individually. Because the entire family uses and enjoys the RV together, the lot lease payment and RV utility expenses are a "household expense" for purposes of § 101(10A), and the marital adjustment deduction is disallowed.

2. Tuition Expenses

The Bankruptcy Administrator next objects to the deduction in the amount of $333 per month for college tuition for Mr. and Mrs. Gonyo's two dependent children, both of whom reside at Mr. and Mrs. Gonyo's jointly owned residence and attend a local community college. Mrs. Gonyo argues that the tuition payments are not for household purposes, as cessation of the tuition payments would not affect her household's daily operations. She further asserts that her non-filing spouse is responsible for those payments and that she does not individually contribute to them, such that the expenses are "personal" to Mr. Gonyo and may be deducted as part of the marital adjustment. The Bankruptcy Administrator responds that tuition payments are directly for the benefit of Mrs. Gonyo's dependents and therefore plainly qualify as an "amount paid . . . on a regular basis for the household expenses of . . . the debtor's dependents" pursuant to § 101(10A) and must be included in Mrs. Gonyo's CMI figure.

The chapter 7 means test allows a debtor to deduct set figures for private primary and secondary school tuition pursuant to the IRS National and Local Standards. *See* 11 U.S.C.

§ 707(b)(2)(A)(ii)(IV). The IRS National and Local Standards and Form 22A-2 do not provide for a deduction for college tuition or expenses. However, such an expense is common to many debtors, and courts have regularly encountered situations in which a debtor seeks to deduct tuition expenses paid by a non-filing spouse. *See, e.g., In re Vollen*, 426 B.R. at 366 (Bankr. D. Kan. 2010) (disallowing marital adjustment deductions for a second mortgage, car payment, and child's college tuition). The *Vollen* case is particularly instructive.[7] In that case, a debtor's non-filing spouse paid for their daughter's university expenses, and the debtor sought to classify those expenses as "non-household" in order to deduct them as part of the marital adjustment. The *Vollen* court disallowed the deduction and explained that "a dependent's college expense, even when incurred by a person of majority, is a household expense." *Id.* at 373. The court elaborated on this conclusion in explaining that "the family's expenses incurred subsidizing her higher education . . . while she is a dependent amount to support." *Id.; see also In re Persaud*, 486 B.R. 251, 260 (Bankr. E.D.N.Y. 2013) (finding that a chapter 7 debtor's college tuition payments for a dependent child were "household expenses, rather than purely personal expenses of the debtor's spouse").

It is undisputed that the two children are dependents of the Debtor and her non-filing spouse,[8] as they reside in the family home, use family vehicles on a daily basis, and otherwise rely on Mr. and Mrs. Gonyo for ongoing financial support. The biannual tuition payments by Mr. Gonyo directly benefit Mr. and Mrs. Gonyo's two dependent children. The precise source of the tuition payments – whether from a joint checking account or charged to a credit card – is irrelevant

[7] The court notes that the *Vollen* case involved a chapter 13 debtor. As a result, the *Vollen* court's analysis of household expenses as they relate to the marital adjustment was conducted to calculate "projected disposable income" for chapter 13 plan purposes. However, the same analysis regarding household expenses applies, as Official Form 122A-2 in chapter 7 cases is analogous to Official Form 122C-2 in chapter 13 cases.

[8] Mrs. Gonyo claims the two majority-age children as dependents in listing a household size of five on Form 122A-1. In addition, Mr. and Mrs. Gonyo claim three dependent children for federal tax purposes, as documented on their 2016 Internal Revenue Service Form 1040. *See* BA's Ex. B.

to the court's characterization of the tuition expenses as "household" in nature. The classification is based on the fact that the payment of the daughters' tuition serves to support members of the household on the whole and is not purely personal to Mr. Gonyo. In short, providing for the educational needs of members of a household constitutes a household expense. As a result, the college tuition payments may not be deducted as part of the marital adjustment and the amount of $333 must be included in Mrs. Gonyo's CMI pursuant to 11 U.S.C. § 101(10A)(B).

3. Child's Soccer Expenses

The Bankruptcy Administrator also objects to Mrs. Gonyo's claimed marital adjustment deduction of $300 per month for Mr. and Mrs. Gonyo's child's "soccer expenses." At the hearing, Mrs. Gonyo explained that their daughter is a member of a travel soccer league and also plays for her high school varsity soccer team. Membership on these two teams requires payment of club dues and team dues, the purchase of uniforms, and regular travel throughout the year. Mr. and Mrs. Gonyo both testified that they seek to pay the soccer expenses jointly and frequently make payments on these expenses out of their joint checking account. Nonetheless, Mrs. Gonyo contends that these expenditures qualify as "non-household expenses" and may therefore be properly deducted through the marital adjustment.

Based upon the testimony at the hearing, it is clear that Mr. and Mrs. Gonyo's daughter's soccer activities are an integral part of their home's daily operations. At the hearing, Mrs. Gonyo explained that attendance at their child's soccer matches exists as "part of their weekend lifestyle" and emphasized its importance to their family. Mrs. Gonyo, Mr. Gonyo, and the daughter all derive enjoyment and entertainment from the soccer activities. In this particular case and on these particular facts, the court finds the soccer expenses to be of a household nature under any standard. Mr. Gonyo's contributions therefore constitute an "amount paid . . . on a regular basis for the

household expenses of . . . the debtor's dependents" in accordance with § 101(10A)(B) and may not be deducted as part of the marital adjustment.

C. Revised Means Test Calculation

The court will next recalculate Mrs. Gonyo's means test based upon the inclusion of Mr. Gonyo's incentive pay, inclusion of the 2016 Refund, and the disallowance of the three disputed marital adjustment deductions.

	Addition or Deduction	**Result**
CMI [Form 122A-1, Line 1]		$9,321.41
Add Incentive Pay	($735.33 x 5) + ($1,094) / 6 = $795.11	
Adjusted CMI, Including Incentive Pay		$10,116.52
Allowed Marital Adjustment Deductions	-$977.68 for 401(k) -$886.00 for vehicles and credit cards	
Adjusted CMI, Less Allowed Marital Adjustment Deductions		$8,252.84
Deduction for Taxes, Adjusted to Include 2016 Refund [Form 122A-2, Line 16]	-$1,389.56	
All Other Allowed Deductions [Form 122A-1, Line 38]	-$3,672 for all other IRS expense allowances (not including taxes, see above line) -$538.89 for allowed additional expense deductions -$985.00 for deductions for debt payment	
TOTAL DEDUCTIONS		***-$6,585.45***
Adjusted Net Monthly Disposable Income [Form 122A-1, Line 39C]		$1,667.39
Adjusted Net Monthly Disposable Income X 60		$100,043.40

Under the statutory formula contained in § 707(b)(2), a presumption of abuse arises where a debtor's net monthly disposable income multiplied by sixty exceeds $12,850. *See* 11 U.S.C. § 707(b)(2)(B)(iv)(II). In this case, sixty months of Mrs. Gonyo's net monthly disposable income is $100,043.40, which clearly exceeds the statutory figure. As a result, a presumption of abuse arises and Mrs. Gonyo does not pass the means test. No evidence of special circumstances was presented at the hearing to rebut the presumption in accordance with § 707(b)(2)(B)(I), and dismissal under § 707(b)(1) is therefore warranted.

D. Dismissal Pursuant to 11 U.S.C. § 707(b)(3)

Finally, the Bankruptcy Administrator alleges that Mrs. Gonyo's case should be dismissed pursuant to § 707(b)(3). If the presumption of abuse does not arise under § 707(b)(1) or is rebutted, § 707(b)(3) requires a court is to consider "whether the debtor filed the petition in bad faith; or (B) the totality of the circumstances . . . of the debtor's financial situation demonstrates abuse." 11 U.S.C. § 707(b)(3)(A)-(B). Here, because the case must be dismissed pursuant to § 707(b)(1), the court need not fully consider whether Mrs. Gonyo filed her petition in bad faith or whether the totality of her financial circumstances demonstrates abuse.

However, the court is troubled by the timing of Mrs. Gonyo's filing and the accumulation of nearly $40,000 in unsecured debt in the eight-year interim as a result of consumer spending. While § 727(a)(8) may allow a debtor to refile a petition for relief under chapter 7 and receive another discharge after eight years, that alone does not render such a subsequent refiling an act of good faith. In addition, Mrs. Gonyo failed to include all sources of income on her Schedule I and in calculating her CMI on Form 122A-1. In understating Mr. Gonyo's actual income and failing to account for the tax refund, Mrs. Gonyo concealed potential disposable income available for distribution to her unsecured creditors. While the court is concerned that the timing of Mrs.

Gonyo's second filing and understatement of income demonstrate a potential abuse of the chapter 7 process, dismissal of the case pursuant to § 707(b)(1) eliminates the need to further consider these two issues.

CONCLUSION

Based on the foregoing, the Bankruptcy Administrator's motion to dismiss pursuant to § 707(b)(1) is ALLOWED. The debtor may convert the case to one under chapter 13 within fourteen days of this order, failing which the case will be dismissed without further notice or hearing.

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