

In the United States Bankruptcy Court
for the Northern District of Iowa
Western Division

MELODY SUE MOON
Debtor.

Bankruptcy No. 93-51035XS
Chapter 13

ORDER RE: CONFIRMATION OF CHAPTER 13 PLAN

Melody Sue Moon's amended chapter 13 plan came before the court for confirmation on April 12, 1994, in Sioux City. Attorney Ruth Carter appeared for debtor; Carol Dunbar appeared as case trustee. The amended plan was filed March 9, 1994, and was served March 15, 1994 with notice of the hearing date and bar date for objections. The only objection was filed by the trustee. Trustee objects to debtor's use of a pre-petition asset (tax refunds) to pay unallowed post-petition (medical claims). The trustee asserts that the refunds should come into the estate, and the post-petition claimants should be treated under the plan as claimants under 11 U.S.C. § 1305.

The court cannot confirm debtor's plan over the objection of the trustee. Debtor states that she has incurred post-petition medical debts, not covered by insurance, which amount to \$1,500.00. This amount is allocated among four creditors: Methodist Hospital in Omaha; an anesthesiologist; a pathologist; and a doctor. There is insufficient evidence to determine how the amount is distributed among the four. There is no evidence that any of them has filed proofs of claim or that any of them is aware of the case. They may file claims under 11 U.S.C. § 1305(a)(2). These claims, if filed, could be allowed and if allowed, paid as debtor desires.

But debtor states in the submission-of-assets portion of her plan that although she anticipates receiving \$2,000.00 in federal and state tax refunds, she does not propose submitting the refunds to the supervision and control of the trustee, but instead plans to pay part of them directly to the four creditors. Debtor received the federal refund of \$1,600.00 prior to the hearing. Approximately \$718.00 of her federal refund was taken by the Iowa Child Support Recovery Unit. A portion of the balance was used for living expenses while the debtor was off work due to her illness. The remaining portion of the federal refund and the expected state refund are less than \$1,300.00. This asset is property of the estate. It is likely that a portion of the refunds is actually post-petition earnings, as this case was filed approximately mid-way through the 1993 tax year.

The plan is not confirmable because debtor proposes using estate assets to pay the post-petition claims, regardless of whether they are allowed. It is unclear whether, if filed, the claims would be allowed. If the claims would be allowed and thus treated under the plan, the court believes that the circumstances of this case warrant that they should be paid through the trustee.

IT IS ORDERED that confirmation of the debtor's chapter 13 plan, filed March 9, 1994, is DENIED. Judgment shall enter accordingly.

SO ORDERED ON THIS 19th DAY OF APRIL, 1994.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order and a judgment by U. S. mail to: Carol Dunbar, Ruth Carter, Al Sturgeon & USTrustee.