

**Dated: August 21, 2024**  
**The following is ORDERED:**



---

**Denise E. Barnett**  
**UNITED STATES BANKRUPTCY JUDGE**

---

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

In re:

**Phoebe Fryerson,**  
Debtor.

Case No.: 23-21985  
Chapter 7

---

**MEMORANDUM OPINION AND ORDER DENYING MOTION  
TO DISMISS CASE PURSUANT TO 11 U.S.C. § 707(b)(2) or (3)**

This case came before the Court on the United States Trustee's *Motion to Dismiss Case Pursuant to 11 U.S.C. § 707(b)(2) or (b)(3)* ("Motion to Dismiss") and Phoebe Fryerson's ("Ms. Fryerson's" or "Debtor's") *Response to the United States Trustee's Motion to Dismiss* ("Response").<sup>1</sup> A trial was conducted on March 21, 2024. Upon review of the record and arguments from the parties, the Motion to Dismiss is denied for the reasons outlined below.

---

<sup>1</sup> ECF Nos. 20 and 24.

## **I. PROCEDURAL AND FACTUAL BACKGROUND**

### **A. Procedural Background**

On April 24, 2023 (“Petition Date”), Ms. Fryerson filed a voluntary petition, schedules, and statements, commencing a case under Chapter 7 of the Bankruptcy Code (“the Code”).<sup>2</sup> On the Petition Date, Ms. Fryerson also filed her Chapter 7 Statement of Your Currently Monthly Income Form 122A-1 and Chapter 7 Means Test Calculation Form 122A-2 (“Means Test form”).<sup>3</sup> On June 20, 2023, the United States Trustee filed a statement of presumption of abuse.<sup>4</sup>

On July 13, 2023, the United States Trustee filed a Motion to Dismiss pursuant to 11 U.S.C. § 707(b)(2) or (b)(3), in which the United States Trustee contends that Ms. Fryerson’s chapter 7 case should be dismissed because there is a presumption of abuse after adjustments were made to Ms. Fryerson’s Means Test form, or alternatively, dismissal is appropriate pursuant to subsection 707(b)(3) based the totality of circumstances.<sup>5</sup> On August 14, 2023, Ms. Fryerson filed her Response to the Motion to Dismiss, in which she disagreed with the United States Trustee’s allegations about her income, expenses, and household size, and contends that there is no presumption of abuse, and the case should not be dismissed pursuant to subsection 707(b)(2) or (b)(3).<sup>6</sup>

---

<sup>2</sup> ECF No. 1.

<sup>3</sup> ECF No. 4.

<sup>4</sup> ECF No. 19.

<sup>5</sup> ECF No. 20, at 3, 7, 9-11.

<sup>6</sup> ECF No. 24, at 2, 8-9.

On August 21, 2023, the Court entered an *Order Scheduling Trial* on the Motion to Dismiss and the Response for October 24, 2023, at 9:30 a.m.<sup>7</sup> During the course of the case, there were several discovery disputes.<sup>8</sup> Upon the United States Trustee’s request, the trial was rescheduled to March 21, 2024 on the Motion to Dismiss and the Response.<sup>9</sup> Both the United States Trustee and Debtor submitted joint exhibits. After the conclusion of the trial, the parties submitted their respective post-trial memoranda, in lieu of oral arguments.<sup>10</sup>

***B. Factual Background***

***Positions of the Parties***

The United States Trustee contends that the case should be dismissed pursuant to subsection 707(b)(2) because Ms. Fryerson’s deductions on her Means Test form included “excessive, mischaracterized, and undocumented expenses” regarding the local standard for housing, education, telephone, additional food, clothing, and other expenses.<sup>11</sup> The United States Trustee argued that Ms. Fryerson failed to prove any special circumstances that would rebut the presumption of abuse because she never listed any special circumstances on Line 43 of the Official Form 122A-2.<sup>12</sup> The United States Trustee further argued that, alternatively, dismissal is

---

<sup>7</sup> ECF No. 28.

<sup>8</sup> Before the Court was the *UST’s Objection to Admissibility of Exhibits*. (ECF No. 59). On April 3, 2024, the Court entered an *Order Withdrawing the United States Trustee’s Objection to Admissibility of Exhibits*, in which the United States Trustee desired to withdraw the Objection. (ECF No. 63).

<sup>9</sup> ECF Nos. 44 and 47.

<sup>10</sup> United States Trustee’s Motion to Dismiss (“Trial on Mar. 21, 2024”), Mar. 21, 2024, at 3:14 p.m.; ECF Nos. 65 and 66.

<sup>11</sup> ECF No. 66, at 1.

<sup>12</sup> *Id.* at 14.

appropriate based on the totality of circumstances under subsection 707(b)(3)(B).<sup>13</sup> The United States Trustee asserted that “certain expenses” listed on Schedule J, such as Ms. Fryerson’s student loan expenses, are overstated, and Ms. Fryerson’s bank account activity showed that she was capable of paying her creditors.<sup>14</sup>

Ms. Fryerson contends that the United States Trustee’s motion to dismiss should be denied because there is no presumption of abuse based on her expenses.<sup>15</sup> Further, Ms. Fryerson argued that the United States Trustee failed to prove that the case should be dismissed based on the totality of circumstances test under subsection 707(b)(3) because there is no showing that she “engaged in the unbridled accumulation of consumer debt.”<sup>16</sup>

*Assets, Liabilities, Income, and Expenses*

On March 21, 2024, the Court conducted a trial on the United States Trustee’s Motion to Dismiss and Ms. Fryerson’s Response. Both parties submitted documentary and testimonial evidence. Relying on documents filed in the case, evidence presented, and the post-trial memoranda, the Court outlines the relevant facts.

The assets and liabilities in this chapter 7 case are modest. Ms. Fryerson does not own real estate, and her personal properties consist of an automobile, household goods, and other personal properties. Listed on Schedules A/B and D is a 2015 Nissan Murano, with about 120,000 miles, with a stated value of \$18,000.00 and loan balance of \$12,829.00. Ms. Fryerson’s

---

<sup>13</sup> *Id.* at 15-17.

<sup>14</sup> *Id.* at 2, 17-20.

<sup>15</sup> ECF No. 65.

<sup>16</sup> *Id.*

other personal property and household goods have a stated value of \$1,700.00.<sup>17</sup> Ms. Fryerson's Schedule D listed two creditors holding secured claims for \$13,135.00, her automobile loan and an obligation for \$306.00. There are no creditors holding priority claims that were listed on Schedule E/F. Ms. Fryerson listed creditors holding general unsecured claims in the amount of \$46,758.16, a majority of which appears to consist of student loans.<sup>18</sup>

On the Petition Date, Ms. Fryerson was employed as a Licensed Practical Nurse (an LPN) at Allenbrooke Nursing and Rehabilitation ("Allenbrooke").<sup>19</sup> At Allenbrooke, Ms. Fryerson's earned gross wages was \$7,000.00 per month as shown on Schedule I and Form 122A-1.<sup>20</sup> The United States Trustee and Ms. Fryerson agree that her current monthly income during the CMI period was \$7,000.00 per month, which created an annualized income of \$84,000.00.<sup>21</sup> The United States Trustee does not dispute that Debtor has a household size of two.<sup>22</sup>

After the Petition Date, Ms. Fryerson's employment changed with two new employers. Ms. Fryerson worked at Midtown Center as a Unit Manager from November 2023 to January 2024.<sup>23</sup> Starting around June 2023 through the trial date, Ms. Fryerson was employed as an LPN at Lakeside Behavioral Health System ("Lakeside"), earning \$28.45 per hour, for about 24 hours

---

<sup>17</sup> J. Ex. 1.

<sup>18</sup> J. Ex. 1, at Schedule E/F.

<sup>19</sup> J. Ex. 1, at Schedule I.

<sup>20</sup> J. Ex. 1 and 2, at Schedule I and Form 122A-1; ECF No. 4.

<sup>21</sup> J. Ex. 2; ECF No. 66, at 2.

<sup>22</sup> ECF No. 66, at 2.

<sup>23</sup> Trial on Mar. 21, 2024, at 2:32 p.m. Ms. Fryerson testified that she no longer works at Midtown Center, and Lakeside is her only place of employment.

per week working part-time, which is about \$2,958.80 gross pay per month.<sup>24</sup> While working for Lakeside, Ms. Fryerson was also a nursing student to become a registered nurse.<sup>25</sup>

Acknowledging Ms. Fryerson's clear change in her income, the United States Trustee nevertheless points to deposits into her bank account to support the argument that she is able to pay creditors.<sup>26</sup>

The United States Trustee and Ms. Fryerson disagreed as to Lines 10, 20, 23, and 30 of Official Form 122A-2:

<i>Official Form 122A-2</i>	<i>United States Trustee</i>	<i>Ms. Fryerson</i>
Line 10—For disputing the IRS Local Standard for housing is incorrect and affects the calculation of your monthly expenses, fill in any additional amount you claim.	\$0.00	\$664.00
Line 20—Education	\$0.00	\$650.00
Line 23—Optional telephone and telephones service	\$0.00	\$173.00
Line 30—Additional Food Expense.	\$0.00	\$47.00

On Line 10 of Official Form 122A-2, Ms. Fryerson listed an additional amount of \$664.00 to capture additional expenses of “excess rental and utility expense.”<sup>27</sup> The United States Trustee contends that Line 10 should be zero. Ms. Fryerson ultimately agreed that Line 10

---

<sup>24</sup> Trial on Mar. 21, 2024, at 2:34 p.m.; *See also* J. Ex. 7-8, 12.

<sup>25</sup> *Id.* at 3:22 p.m.

<sup>26</sup> The United States Trustee also reviewed Ms. Fryerson's Navy Federal Credit Union bank account statements (“bank statements”), pointing to \$82,756.31 in deposits made between June 13, 2023, and February 19, 2024, and points out various transactions, including transactions in Las Vegas, NV. *See* J. Ex. 9, at 10-17, 26-34, 57-66. Ms. Fryerson testified that although she is the sole owner of the bank account, her adult son has access to the bank account and uses her debit card, including when he travels to Las Vegas, NV. Trial on Mar. 21, 2024, at 3:08 p.m.

<sup>27</sup> ECF No. 4. Debtors may fill out Line 10 if they believe that “the U.S. Trustee Program's division of the IRS Local Standard for housing is incorrect and affects the calculation of your monthly expenses.”

of Official Form 122A should be zero and contends that the additional rent should be captured on Line 43 of the Official Form 122A-2 as special circumstances. In September 2023, Ms. Fryerson's rent increased from \$1,464.00 to about \$1,573.00.<sup>28</sup> Ms. Fryerson unsuccessfully tried to search for a more affordable apartment.<sup>29</sup>

On Line 20 of Official Form 122A-2, Ms. Fryerson claimed education expenses of \$650.00 for "student loan payments" and "home schooling" expenses.<sup>30</sup> Ms. Fryerson testified that the \$650.00 expense deduction captures the \$2,400.00 per semester for nursing school to become a registered nurse and her student loan obligations (which is in deferment).<sup>31</sup> Additionally, the \$650.00 deduction is supposed to capture a \$250.00 per month "home schooling" expense for her younger son who has respiratory problems. Ms. Fryerson, however, concedes that this homeschooling expense no longer exists, and if it does, it should have been on Line 29 of the Official Form 122A-2.<sup>32</sup>

On Line 23 of Official Form 122A-2, Ms. Fryerson listed her optional telephone and telephone service expenses as \$173.00. Ms. Fryerson testified that she has excess telecommunications expenses beyond her basic services of \$173.00 per month and that her cell phone bill is usually \$250.00 per month (with \$350.00 listed on Schedule J) and includes her eldest son's cell phone bill.<sup>33</sup>

---

<sup>28</sup> *Id.* at 2:50 p.m.

<sup>29</sup> *Id.*

<sup>30</sup> J. Ex. 2; ECF Nos. 1 and 4.

<sup>31</sup> Trial on Mar. 21, 2024, at 2:17 p.m., 2:39 p.m., 2:43 p.m., and 3:01 p.m.; *See also* J. Ex. 11, at 36-38.

<sup>32</sup> ECF No. 4; Trial on Mar. 21, 2024, at 1:56 p.m., 2:36 p.m., and 2:52 p.m.; *See also* J. Ex. 11, at 41-42; ECF No. 66, at 11.

<sup>33</sup> ECF Nos. 1 and 4; Trial on Mar. 21, 2024, at 3:11 p.m.

On Line 30 of the Official Form 122A-2, Ms. Fryerson listed \$47.00 in additional food expenses (in addition to the allowed deduction of \$1,410.00 for a family of two on Line 6), contending that she incurs more than the allowed deduction for foods, clothing and other items.<sup>34</sup> The United States Trustee calculated Line 30 as \$0.00 because Ms. Fryerson did not provide any documented proof of additional expenses for food, clothing and other items.<sup>35</sup> The United States Trustee's fact witness testified that he did not have any information about Ms. Fryerson's additional food expenses at the time he prepared the Means Test form.<sup>36</sup> The State of Tennessee's median family income for a family of two is \$66,506.00.<sup>37</sup>

## **II. LEGAL DISCUSSION**<sup>38</sup>

### **A. 11 U.S.C. § 707(b)(2) - Presumption of Abuse**

Subsection 707(b)(1) of the Bankruptcy Code states, in relevant part, that:

After notice and a hearing, the court . . . may dismiss a case filed by an individual debtor under this chapter who debts are primarily consumer debts, or, with the debtor's consent, convert such a case under chapter 11 or 13 of this title, if it finds that the granting of relief would be an abuse of the provisions of this chapter.<sup>39</sup>

There is no dispute that Ms. Fryerson's debts are primarily consumer debts,<sup>40</sup> and therefore, the Court turns to whether the granting of relief would be an abuse of the provisions of

---

<sup>34</sup> ECF No. 4; Trial on Mar. 21, 2024, at 2:49 p.m.

<sup>35</sup> *Id.* at 2:03 p.m.

<sup>36</sup> *Id.*

<sup>37</sup> J. Ex. 2.

<sup>38</sup> The Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1334(b). Venue is proper in this District. 28 U.S.C. § 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The following shall constitute the court's findings of fact and conclusions of the law in accordance with Rule 7052, Federal Rules of Bankruptcy Procedure.

<sup>39</sup> 11 U.S.C. § 707(b)(1) (2024).

<sup>40</sup> *See* 11 U.S.C. § 101(8) (2024) (defining the term "consumer debt").



chapter 7. Granting relief may be an abuse of the provisions of chapter 7 if a debtor “fails the means test” because (on its face or after adjustments to the Means Test form) the presumption of abuse arises (showing sufficient disposable income to pay creditors over time).<sup>41</sup> The “means test” was added to the Code through the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”) to ensure that debtors who are financially able to repay their creditors repay them.<sup>42</sup> The burden of proof is on the movant to show that the presumption of abuse arises under subsection 707(b)(2).<sup>43</sup> The chapter 7 debtor may rebut the presumption of abuse by demonstrating “special circumstances” pursuant to subsection 707(b)(2)(B).<sup>44</sup>

#### *Current Monthly Income (CMI) and Deductions*

The United States Trustee accepted Ms. Fryerson’s stated CMI of \$7,000.00 for the

---

<sup>41</sup> See 11 U.S.C. § 707(b)(2)(A)(i)-(ii), that reads:

- (i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor’s current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—  
(I) 25 percent of the debtor’s nonpriority unsecured claims in the case, or \$9,075, whichever is greater; or  
(II) \$15,150.

*See also In re Maura*, 491 B.R. 493, 497 (Bankr. E.D. Mich. 2013) (analyzing a motion to dismiss pursuant to § 707(b)(2)).

<sup>42</sup> *Id.* at 497.

<sup>43</sup> *In re Behne*, 575 B.R. 893, 898 (Bankr. D. Neb. 2017) (explaining the burden of proof on a motion under § 707(b)(2)).

<sup>44</sup> See 11 U.S.C. § 707(b)(2)(B) (2024), that reads:

- (i) In any proceeding brought under this subsection the presumption of abuse may only be rebutted by demonstrating special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.
- (ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide — (I) documentation for such expense or adjustment to income; and (II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

*See also In re Sorrell*, 359 B.R. 167, 179 (Bankr. S.D. Ohio 2007) (explaining how the presumption of abuse can be rebutted under § 707(b)(2)).

180-days preceding the month of the bankruptcy filing (with an annual income of \$84,000.00), and her household size of two.<sup>45</sup> The United States Trustee contends that with a CMI of \$7,000.00 (\$84,000.00 annually), and adjustments to Lines 10, 20, 23, and 30 of the Means Test form, the presumption arises and there is sufficient disposable income to pay creditors.

In the United States Trustee’s post-trial memorandum, the impact of Ms. Fryerson’s change in employment on the 707(b)(2) analysis was not discussed, although the United States Trustee recognized that a debtor “can demonstrate special circumstances that permit them to claim greater expenses or adjustments to income” pursuant to 11 U.S.C. § 707(b)(2)(B)(i).<sup>46</sup> The “special circumstances” provision is governed by 11 U.S.C. § 707(b)(2)(B).<sup>47</sup> In formulating the this provision, Congress recognized that life’s realities may cause a debtor to experience an increase or a decrease in their income after filing bankruptcy, and so the Code provides for a rebuttal of the presumption of abuse by a showing of special circumstances to justify changes in the debtor’s income.<sup>48</sup> The burden shifts to the debtor to rebut the presumption of abuse by demonstrating special circumstances, and if a debtor is successful in establishing that special

---

<sup>45</sup> ECF No. 66, at 2.

<sup>46</sup> ECF No. 66, at 14.

<sup>47</sup> See 11 U.S.C. § 707(b)(2)(B) (2024), that reads:

- (i) In any proceeding brought under this subsection the presumption of abuse may only be rebutted by demonstrating special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.
- (ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide — (I) documentation for such expense or adjustment to income; and (II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

<sup>48</sup> *In re Mestemaker*, 359 B.R. 849, 854 (Bankr. N. D. Ohio 2007) (discussing how a debtor may rebut the presumption of abuse).

circumstances exist, the party seeking dismissal must then show that those special circumstances are independent of the means test.<sup>49</sup>

The United States Trustee argued that Ms. Fryerson did not list any “special circumstances” on Line 43 of the Means Test Form.<sup>50</sup> At trial, Ms. Fryerson demonstrated “special circumstances” that rebuts a presumption of abuse.<sup>51</sup> Ms. Fryerson’s CMI is based on the income she received when she was employed at Allenbrooke at the time she filed her chapter 7 case.<sup>52</sup> After she filed her bankruptcy petition, Ms. Fryerson experienced a change in her employment.<sup>53</sup> At Lakeside, Ms. Fryerson earned about \$2,958.80 per month in gross pay, which is about \$35,505.60 annually.<sup>54</sup> The State of Tennessee’s median family income for a family of

---

<sup>49</sup> See *In re Tapply*, 652 B.R. 124, 132-33 (Bankr. D. Mass. 2023) (stating that the parties agree that once the presumption of abuse arises, the debtor bears the burden of showing that special circumstances exist to rebut the presumption); *In re Behne*, 575 B.R. at 898 (holding that an exception applies in cases where a presumption of abuse would otherwise arise under the Means Test, and in which the debtor asserts that other “necessary expenses” or permitted deductions for debt payment negate the presumption, in which the burden shifts to the debtor); *In re Harmon*, 446 B.R. 721, 727 (Bankr. E.D. Pa. 2011) (holding that in a Chapter 7 case in which the Means Test presumption of abuse arises, the debtor bears the burden of showing that “special circumstances” justify the additional expenses that the debtor has claimed).

<sup>50</sup> ECF No. 66, at 14-15. Failing to acknowledge the impact of Ms. Fryerson’s post-petition reduced wages, the United States Trustee argues that Ms. Fryerson checked the “No” box in response to Line 43 of Means Test form in responding to the question, “Do you have any special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative?” The United States Trustee argues that the “only Means Test calculation that can be and should be considered and relied on is the one prepared by the United States Trustee based on the evidence presented,” because it is the “one that closest represents reality. The Debtor has disposable income of \$1,362.05 a month.” This Court does not agree, because bankruptcy courts have consistently interpreted the “special circumstances” provision of the Bankruptcy Code as requiring the analysis of facts on a case-by-case basis. See *Eisen v. Thompson*, 370 B.R. 762, 772 (N.D. Ohio 2007) (concluding that the language of “special circumstances” provisions implies “fact-specific circumstances.”); *In re Vaccariello*, 375 B.R. 809, 813 (Bankr. N.D. Ohio 2007) (stating that analysis of special circumstances requires an “examination of the facts in each particular situation.”).

Trial on Mar. 21, 2024, at 2:31 p.m.

<sup>51</sup> Trial on Mar. 21, 2024, at 2:32 p.m. and 3:22 p.m.; J. Ex. 6, 7 and 12.

<sup>52</sup> Trial on Mar. 21, 2024, at 2:31 p.m.

<sup>53</sup> Trial on Mar. 21, 2024, at 2:35 p.m. and 3:22 p.m.; J. Ex. 6, 7, and 12.

<sup>54</sup> Trial on Mar. 21, 2024, at 2:31 p.m.; See also J. Ex. 12. Ms. Fryerson’s paystubs from Lakeside show that she does work overtime hours, but they are inconsistent.

two is \$66,506.00.<sup>55</sup> Because \$35,505.60 is below the State of Tennessee’s median income for a family of two, Ms. Fryerson would be considered a below-median income debtor, which requires no further analysis of the Means Test form. Ms. Fryerson’s income is about \$4,041.20 less, which represents a significant change in her financial circumstances that this Court must consider when determining whether there is a presumption of abuse under section 707(b)(2). Because Ms. Fryerson demonstrates a significant change in financial circumstances post-petition, there is no finding of presumption of abuse under subsection 707(b)(2).<sup>56</sup>

**B. 11 U.S.C. § 707(b)(3)(B) –Totality of Circumstances**

The United States Trustee contends that, alternatively, this case should be dismissed based on the totality of circumstances pursuant to 11 U.S.C. § 707(b)(3) (B), which states that:

In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph (2)(A)(i) does not arise or is rebutted, the court shall consider—

. . .

(B) the totality of the circumstances (including whether the debtor seeks to reject a personal service contract and the financial need for such rejection as sought by the debtor) of the debtor’s financial situation demonstrates abuse.<sup>57</sup>

---

<sup>55</sup> J. Ex. 2.

<sup>56</sup> Although there is no need to discuss the disputed deductions on the Means Test form the Court notes that other bankruptcy courts have held that a debtor’s additional expenses for rent and to support family members with medical conditions are qualified as “special circumstances” of a kind that are sufficient to rebut a presumption of abuse. *See, e.g., In re Graham*, 363 B.R. 844, 851 (Bankr. S.D. Ohio 2007) (concluding that the debtor’s rental expenses of \$1,165.00 and utility expenses of \$163.00 qualified as “special circumstances,” because the debtor needed to move to Virginia for his employment, he was “unsuccessful in finding more modest but appropriate accommodations for a lesser expense,” and it was “reasonable and necessary” for him to have accommodations sufficient to house his family so that they would reside together.); *In re Chabre*, 531 B.R. 875, 879-80 (Bankr. M.D. Fla. 2015) (concluding that the debtor’s additional expenses to support a disabled family member qualified as “special circumstances” where the need was “permanent and the amount of support is unlikely to decrease.”); *In re Scarafioti*, 375 B.R. 618, 631-34 (Bankr. D. Colo. 2007) (finding that the debtor’s testimony regarding the mental and emotional difficulties of their son established a “special circumstance.”); *In re Littman*, 370 B.R. 820, 831-32 (Bankr. D. Idaho 2007) (stating that the debtor’s obligation to pay monthly child support following a divorce that was finalized roughly two months after filing the bankruptcy petition demonstrated “special circumstances.”).

<sup>57</sup> 11 U.S.C. § 707(b)(3)(B) (2024). The United States Trustee is not pursuing dismissal based on “bad faith” under 11 U.S.C. § 707(b)(3)(A).

Prior to BAPCPA, subsection 707(b)(3) totality of circumstances required a showing of “substantial abuse.”<sup>58</sup> Although BAPCPA changed the term “substantial abuse” to “abuse” under the subsection 707(b)(3)(B),<sup>59</sup> the pre-BAPCPA case law remains intact when reviewing the totality of circumstances under subsection 707(b)(3)(B).<sup>60</sup> To determine the totality of circumstances, the Sixth Circuit, in *Krohn*, outlined six-factors: (1) the debtor’s ability to repay his debts; (2) whether the debtor has a stable source of income; (3) whether the debtor is eligible for adjustment of his debts through Chapter 13 of the Bankruptcy Code; (4) whether there are state remedies with the potential to ease his financial predicament; (5) the degree of relief obtainable through private negotiations; and (6) whether the debtor’s expenses can be reduced significantly without depriving him of the basic necessities of life, such as food, clothing, and shelter.<sup>61</sup> Under subsection 707(b)(3), the movant has the burden of proof, and the standard of proof is preponderance of the evidence.<sup>62</sup>

Evaluating the evidence considering the *Krohn* factors, the greater weight of the evidence does not support dismissal. The United States Trustee raised three primary arguments: (1) Ms.

---

<sup>58</sup> *In re Mestemaker*, 359 B.R. at 856.

<sup>59</sup> *In re Pandl*, 407 B.R. 299, 301 (Bankr. S.D. Ohio 2009).

<sup>60</sup> *In re Pandl*, 407 B.R. at 301; *See also Mestemaker*, 359 B.R. at 856 (explaining that courts applied “substantial abuse” based on the “totality of the circumstances” on motion to dismiss under § 707(b)(3) before BAPCPA); *In re Moutousis*, 418 B.R. 703, 709-10 (E.D. Mich. 2009) (explaining that *Krohn* requires bankruptcy courts to determine whether a petition is an abuse under the “totality of the circumstances” in analyzing a debtor’s ability to pay); *In re Weixel*, 494 B.R. 895, 901-02 (Bankr. B.A.P. 6th Cir. 2013) (highlighting substantial changes that were made to the amended BAPCPA); *In re Meehean*, 619 B.R. 371, 375-76 (E.D. Mich. 2020) (stating that bankruptcy courts should consider all of the debtor’s income and expenses that are relevant to his/her financial situation).

<sup>61</sup> *In re Krohn*, 886 F.2d 123, 126-27 (6th Cir. 1989) (explaining factors to be considered on a motion to dismiss under section 707(b)(3) for the totality of circumstances).

<sup>62</sup> *See In re Hamilton*, 655 B.R. 911, 913 (Bankr. S.D. Ohio 2024) (holding that the United States Trustee holds the burden of proof in proving the totality of circumstances); *In re Cribbs*, 387 B.R. 324, 332 (Bankr. S.D. Ga. 2008) (concluding that United States Trustee has burden of proof under section 707(b)(3)); *In re Pandl*, 407 B.R. at 301-02 (finding that the United States Trustee has the burden of proof by a preponderance of the evidence).

Fryerson overstated her student loan expenses on Schedule J, (2) Ms. Fryerson's bank statements show that she can pay her creditors, and (3) Ms. Fryerson is taking classes to increase her earning capacity.<sup>63</sup> First, the United States Trustee argued that Ms. Fryerson's claim of \$650.00 monthly expense on her student loan payments is overstated.<sup>64</sup> Although Ms. Fryerson admits that her student loans are currently in deferment, even if this expense is removed from her budget on Schedule J, her decreased wages should be taken into account.<sup>65</sup> Next, the United States Trustee argued that Ms. Fryerson's Navy Federal Credit Union account statements show deposits of \$82,756.31 (between June 2023 and February 2024), and included travel and gambling activities in Las Vegas, Nevada.<sup>66</sup> Ms. Fryerson clarified at trial that she was the sole owner of the bank statements, but that her eldest son had access to her financial account and her debit card and had traveled to Las Vegas to gamble.<sup>67</sup> This testimony was not contradicted by the United States Trustee. Also, there is no clear showing that the deposits into the account are income to Ms. Fryerson.<sup>68</sup>

Finally, the United States Trustee argued that Ms. Fryerson has the ability to pay her creditors based on her future income as a registered nurse.<sup>69</sup> Bankruptcy courts in the Sixth Circuit have considered a debtor's future income as part of the totality of circumstances

---

<sup>63</sup> ECF No. 66, at 21.

<sup>64</sup> *Id.* at 17.

<sup>65</sup> *Id.*

<sup>66</sup> J. Ex. 9.

<sup>67</sup> *Id.* at 3:09 p.m.

<sup>68</sup> Trial on Mar. 21, 2024, at 3:08 p.m.

<sup>69</sup> Trial on Mar. 21, 2024, at 3:22 p.m.; ECF No. 66, at 5.

analysis.<sup>70</sup> Ms. Fryerson is attending nursing school to become a registered nurse which requires completion of the course work and getting through a licensure process. Ms. Fryerson testified that she would “make more money” once she completed her prerequisites and became a registered nurse.<sup>71</sup> Any future income as a registered nurse is, however, speculative. The United States Trustee offered no evidence of Ms. Fryerson’s future earnings.

None of the United States Trustee’s arguments satisfies the *Krohn* factors. Ms. Fryerson’s income was significantly reduced and her future income cannot be determined.<sup>72</sup> There is also no evidence on the record that indicates that Ms. Fryerson lives a lavish lifestyle or engages in extravagant spending.<sup>73</sup> Ms. Fryerson is currently employed at Lakeside where she is currently working part-time and making about \$2,958.80 per month in gross pay.<sup>74</sup> Ms. Fryerson is making at least \$4,041.20 less at Lakeside than what she made at Allenbrooke when she filed her bankruptcy petition.<sup>75</sup> There was no discussion regarding a hypothetical chapter 13 plan that takes into account Ms. Fryerson’s lower wages and increased rent payments.<sup>76</sup> Neither the United States Trustee nor Ms. Fryerson put forth evidence of any remedies that the State of Tennessee would be able to provide Ms. Fryerson. Neither the United States Trustee nor Ms. Fryerson put forth evidence of the degree of relief that would be obtainable by either Ms.

---

<sup>70</sup> See *In re Hamilton*, 655 B.R. at 914; *In re Parada*, 391 B.R. 492, 502-03 (Bankr. S.D. Fla. 2008); *In re Harr*, 373 B.R. 493, 498 (Bankr. N.D. Ohio 2007) (holding that the future income of a debtor may be relied upon as the “sole basis” for dismissing a case based upon the totality of circumstances).

<sup>71</sup> Trial on Mar. 21, 2024, at 3:22 p.m.

<sup>72</sup> ECF No. 1.

<sup>73</sup> ECF Nos. 1 and 4.

<sup>74</sup> Trial on Mar. 21, 2024, at 2:34 p.m.

<sup>75</sup> J. Ex. 12; ECF No. 4.

<sup>76</sup> ECF No. 66, at 22.

Fryerson or her creditors through private negotiations. Ms. Fryerson's expenses likely cannot be reduced significantly without depriving her of the necessities of life. The record shows that Ms. Fryerson is currently paying a higher rent amount of \$1,573.00. Additionally, some courts consider the types of debt that the debtor is seeking to discharge in evaluating whether granting relief under chapter 7 is "abuse" under the totality of circumstances.<sup>77</sup> Her general unsecured debt totals \$46,758.00, of which \$35,377.00 consist of student loans.<sup>78</sup> Ms. Fryerson owns no real estate. She rents. Her personal property consists of one vehicle, a 2015 Nissan Murano, with 120,000 miles, valued at \$18,000.00 (with loan balance of \$12,829.00), and household goods, appliances, furniture, and cooking utensils, clothing, and other personal property with total value of \$1,700.00.<sup>79</sup> Accordingly, the United States Trustee failed to meet his burden of proving dismissal of the case by a showing of abuse based on the totality of circumstances.

### **III. CONCLUSION AND ORDER**

For the reasons stated above, the Court finds and concludes that the United States Trustee established a presumption of abuse under 11 U.S.C. § 707(b)(2)(A), but Debtor rebutted the presumption of abuse under 11 U.S.C. § 707(b)(2)(B) showing that her income is now below the median for a family of two in the State of Tennessee. Additionally, the Court finds and concludes

---

<sup>77</sup> See *In re Beckett*, 442 B.R. 638, 644 (Bankr. N.D. Ohio 2010) (finding that expenses toward the debtor's 26-year-old son who is "perfectly capable of supporting himself" was not a valid expense); *In re Ricci*, 456 B.R. 89, 107 (Bankr. M.D. Fla. 2009) (holding that debtors' lavish lifestyle, which included more than \$6,700.00 per month on home, monthly payments of more than \$2,500.00 for three motor vehicles, and payments of \$600.00 per month on their son's college education warranted dismissal of the debtors' chapter 7 case as abusive based on the totality of circumstances); *In re Reese*, 402 B.R. 43, 55-56 (Bankr. M.D. Fla. 2008) (holding that the debtor's mammoth credit card debt of \$40,000.00 per month warranted dismissal of the debtor's chapter 7 case as abusive based on the totality of circumstances, because the credit card debts were "extravagant" and "irresponsible.").

<sup>78</sup> ECF Nos. 1 and 4.

<sup>79</sup> *Id.*



that the United States Trustee did not meet his burden under subsection 707(b)(3)(B) for the totality of circumstances. Accordingly, it is **ORDERED:**

The *United States Trustee's Motion to Dismiss pursuant to 11 U.S.C. § 707(b)(2) or (3)* is **DENIED.**