

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
JACKIE L. NEW) CASE NO. 07-10867
)
)
Debtor)

DECISION AND ORDER
CONCERNING DEBTOR'S COMPLIANCE WITH § 109(h)

At Fort Wayne, Indiana, on April 10, 2007.

As a result of the bankruptcy reforms of 2005, to be eligible for relief under Title 11 an individual must have received credit counseling from an approved agency during the 180 days prior to filing the petition. 11 U.S.C. § 109(h)(1). This requirement may be waived, however, if the debtor files “a certification,” which “is satisfactory to the court,” describing “exigent circumstances” necessitating the immediate filing of a bankruptcy petition without waiting for the completion of credit counseling, and which “states that the debtor requested credit counseling . . . but was unable to obtain [it]” within five days. 11 U.S.C. § 109(h)(3)(A)(i-iii). The certification must be filed with the petition, see, Interim Bankruptcy Rule 1007(b)(3), (c), and it must state the facts demonstrating both exigent circumstances and the debtor’s efforts to obtain credit counseling “with particularity.” Fed. R. Bankr. P. Rule 9013. If the certification is satisfactory to the court, the debtor is then required to obtain credit counseling within the 30 days following the petition. 11 U.S.C. § 109(h)(3)(B).

The debtor in this case has failed to demonstrate that the eligibility requirements of § 109(h) have been fulfilled. Although the bankruptcy petition clearly instructs to indicate whether credit

counseling has been completed or whether the debtor is requesting a waiver of the requirement,¹ the debtor has not done so. The debtor did not indicate whether credit counseling had been completed or that the debtor requested a waiver the credit counseling requirement. Neither did the debtor file a certificate demonstrating completion of credit counseling or a certification, of any kind, attempting to set forth facts that might justify a waiver of that requirement.

Based upon the present record the debtor is not eligible for relief under Title 11. Debtor shall file a certificate demonstrating that credit counseling was completed within 180 days prior to filing or a request for a waiver of the credit counseling requirement which fully complies with all of the requirements of § 109(h)(3) or § 109(h)(4) within fourteen (14) days. The failure to do so will result in the dismissal of this case without further notice or hearing.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court

¹The court notes that the version of the petition filed by the debtor is a prior version of the official forms. The current version requests that the debtor complete and attach a signed copy of Exhibit D which certifies, under penalties of perjury, that the debtor completed credit counseling within the time required or is requesting a waiver of that requirement.