

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
LORETTA D. JONES) CASE NO. 07-12780
SONNY L. JONES)
)
Debtors)

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

At Fort Wayne, Indiana, on October 1, 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 is to be filed with the petition, see, Interim Bankruptcy Rule 1007(b)(3), 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).

One of the debtors, Loretta Jones, has asked the court to waive the requirement of pre-petition credit counseling.¹ Yet she has not properly done so. If the debtor is seeking a waiver of

¹The joint debtor, Sonny Jones, did not attach a signed copy of Exhibit D to the petition. Neither did he 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. Consequently,

the pre-petition credit counseling requirement, Exhibit D to the petition clearly instructs the debtor to submit a motion for determination by the court and to summarize the applicable exigent circumstances. The debtor did not do so. The debtor has not filed anything with the court describing the exigent circumstances which necessitated the filing of petition without first obtaining credit counseling or any attempts to obtain it. All the debtor has done is state that she cannot obtain the counseling until October 11, 2007. This is not enough.

Based upon the present record neither of the debtors are eligible for relief under Title 11. The debtors shall file a certification demonstrating eligibility for relief under Title 11, which must fully comply with all of the requirements of § 109(h)(3), within fourteen (14) days, or otherwise demonstrate their eligibility for relief under title 11. 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

Mr. Jones has failed to demonstrate that the eligibility requirements of § 109(h) have been fulfilled.