

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
JONATHAN NOAH DILLEY) CASE NO. 08-11134
)
)
Debtor)

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

At Fort Wayne, Indiana, on April 14, 2008.

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, Fed. R. Bankr. P. Rules 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 asked the court to waive the requirement of pre-petition credit counseling. Yet it has not properly done so. If the debtor is seeking a waiver of 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. All the debtor has done is state in forma pauperis on Exhibit D where it asks for a summary of exigent circumstances. 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. At best, this statement indicates only that the debtor faces financial misfortune. While this may help to make the resort to bankruptcy understandable, it is not sufficient to indicate that the filing cannot be delayed while the debtor obtains the required credit counseling.¹

Debtor's certification for a waiver of the requirement of pre-petition credit counseling is not satisfactory to the court; therefore, based upon the present record, the debtor is not eligible for relief under Title 11. Debtor shall file an amended certification which must fully comply with all of the requirements of § 109(h)(3) 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

¹Because the certification fails to describe exigent circumstances meriting a waiver, the court expresses no opinion as to whether any statement concerning unsuccessful efforts to obtain credit counseling is "satisfactory to the court."