

# Not Intended for Publication and/or Citation

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
HOLLY SUE SULLIVAN ) CASE NO. 11-13172  
 )  
 )  
Debtor )

## **DECISION AND ORDER DENYING MOTION TO RECONSIDER**

At Fort Wayne, Indiana, on September 9, 2011.

The debtor in this case had a prior case – Case Number 11-11273 – in which the filing fee had been fully paid, but that case was dismissed on April 27, 2011, because the debtor was unable to demonstrate that she had satisfied the credit counseling requirements of § 109(h) to be eligible for relief under title 11. She refiled the present case on August 19, 2011 and requested that the court waive the filing fee. The application to waive the fee is incomplete, but it suggests that, although the debtor has no income, she has more than \$32,000 in equity in a home and a motor vehicle. The application to waive the fee was denied by the court’s order of August 24, 2011, which, instead of waiving the fee, established a schedule by which it could be paid in installments. The debtor has now asked the court to reconsider that decision. The request is based on a lack of funds to pay the fee and the argument that since she paid the fee in her prior case, she should not have to pay it again.

The court may waive the filing fee (currently \$299) in a Chapter 7 case for an individual if their income is less than 150 percent of the official poverty line and they are unable to pay the fee in installments. Those installments, which cannot exceed four, may be paid over as many as six months. Fed. R. Bankr. P. Rule 1006(b)(2). The debtor bears the burden of proving both of these requirements. In re Burr, 344 B.R. 234, 236 (Bankr. W.D. N.Y. 2006). The first – income less than

150% of the official poverty level – is relatively straight forward. The second – the ability to pay in installments – is more difficult because it requires the court to assess not just the debtor’s present circumstances but their future abilities as well. Whether or not the court waives the fee is a matter committed to its discretion, see, In re Ortiz, 2006 WL 1594152, \*1 (Bankr. M.D. Fla. 2006) (“the statute . . . grants discretion to a bankruptcy court to waive the Chapter 7 filing fee”); In re Burr, 344 B.R. 234, 236 (Bankr. W.D. N.Y. 2006) (“the statute establishes no entitlement to a waiver of the filing fee.”), based upon the totality of the circumstances, see, In re Frye, 440 B.R. 685, (Bankr. W.D. Va. 2010); In re Lephew, 380 B.R. 171, 176-77 (Bankr. W.D. Va. 2007); In re Davis, 372 B.R. 282, 285 (Bankr. W.D. Va. 2007); In re Nuttall, 334 B.R. 921, 923 (Bankr. W.D. Mo. 2005).

The debtor satisfies the first requirement of §1930(f): her lack of any income, as of the date of the petition, Lephew, 380 B.R. at 177-79, is less than 150 percent of the applicable poverty line. The question for the court is whether she is unable to pay the fee in installments? In answering that question courts have considered a variety of factors including: the accuracy of the information given; discrepancies between the application, statement of affairs and schedules; any collateral resources, such as friends or family, the debtor may be able to call upon; debtor’s expenses and whether any of them could be redirected to pay the filing fee; whether the debtor has agreed to pay an attorney; and, whether the debtor has any exempt property that could somehow be used to raise the money to pay the fee. See e.g., In re Stickney, 370 B.R. 31, 40-42 (Bankr. N.H. 2007); In re Spisak, 361 B.R. 408, 413-14 (Bankr. D. Ver. 2007); Robinson, 2006 WL 3498296 \*3-6. Given the equity in the debtor’s assets – \$30,500 in a home and \$2,000 in a motor vehicle – the court believes she does have the ability to pay the fee. See, Robinson, 2006 WL 3498296 \*3-6.

Debtor’s motion to reconsider the order denying her application to waive the filing fee is

DENIED.

SO ORDERED.

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