

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)
)
BARRY L. BRANN) CASE NO. 15-32226 HCD
) CHAPTER 13
)
DEBTOR)

**ORDER DENYING WAIVER OF CREDIT COUNSELING
REQUIREMENT AND DISMISSING CASE**

At South Bend, Indiana, on September 22, 2015.

Before the court is debtor Barry L. Brann's request for a temporary waiver of the pre-petition credit counseling requirement. Brann commenced this chapter 13 bankruptcy case as a pro se debtor on September 14, 2015. He did not obtain a briefing from a credit counseling agency within the 180 days before filing his bankruptcy petition. Instead, he filed with his petition Exhibit D, the "Individual Debtor's Statement of Compliance with Credit Counseling Requirement," in which he requested a temporary waiver of that requirement. For the reasons discussed below, the court denies Brann's request for a temporary waiver of the credit counseling requirement and dismisses this case without prejudice.

DISCUSSION

For an individual to be eligible to commence a case under any chapter of Title 11, § 109(h) of the Code requires that during the 180-day period prior to filing, the individual must receive an individual or group briefing from an approved nonprofit budget and credit counseling agency that outlines the opportunities for

available credit counseling. He or she must also receive assistance in performing a budget analysis. 11 U.S.C. § 109(h)(1). The court may temporarily waive this requirement where a debtor files a certification describing the “exigent circumstances” that call for the immediate filing of a bankruptcy petition before completing credit counseling that is satisfactory to the court . To be entitled to a temporary waiver of this prerequisite, a debtor must meet the requirements of 11 U.S.C. § 109(h)(3). A request for waiver must include a statement that the debtor sought credit counseling but was unable to obtain it within 7-days. The debtor’s certification must describe both the debtor’s efforts to obtain pre-petition credit counseling and the exigent circumstances meriting a temporary exemption of the requirement. *See* § 109(h)(3)(A); *In re Karim*, 2009 WL 2044694, at *2 (Bankr. E.D. Va. July 7, 2009) (“An ‘exigent’ circumstance is an urgent or emergency situation that makes it necessary to file a bankruptcy case immediately because bankruptcy relief would be unavailing if the filing of the petition had to be delayed to obtain credit counseling first.”).

Exigent circumstances exist when an urgent and unusual situation exists involving adverse events that are imminent, and the situation requires a bankruptcy filing immediately. *See In re Fortman*, 456 B.R. 370, 373-74 (Bankr. N.D. Ind. 2011); *Dixon v. LaBarge (In re Dixon)*, 338 B.R. 383, 388 (8th Cir. B.A.P. 2006). Brann’s statement on Exhibit D reads as follows:

Debtor was wrongly (I feel) ____ Illness arose and medically disabled.
Aunt died suddenly. And was hard press to bury her. [*sic*]

Exhibit D, Item 3.

Upon review of Brann's certification, the court finds that his statement does not establish an urgent or emergency situation calling for immediate action. He has not pointed to any circumstance that might call for the immediate filing of a bankruptcy petition. He has not identified any exigent circumstances that would justify waiving the statutory credit counseling mandate. His certification does not show that he even tried to obtain credit counseling.

Finding that Brann has described no exigent circumstance, the court concludes that he has failed to satisfy the eligibility requirements of § 109(h)(3)(A). Therefore the court denies Barry L. Brann's request for a temporary waiver of the credit counseling requirement of § 109(h)(1). Lacking a waiver of the pre-petition credit counseling requirement, Brann is not eligible for relief under the Bankruptcy Code. *See* § 109(h)(1). The court dismisses his bankruptcy case without prejudice.

The court notes Brann has applied to pay the filing fee in this case in installments. In light of Brann's ineligibility to file this case, the court waives any unpaid filing fee installments remaining as of the date of dismissal.

SO ORDERED.

/s/ HARRY C. DEES, JR.

HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT