

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
JIMMY CLAUDE MAY ) CASE NO. 06-10964  
 )  
Debtor )

**DECISION AND ORDER**

At Fort Wayne, Indiana, on July 20, 2006.

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 did not file such a certification with the petition initiating this case. As a result, on June 27, 2006, the court issued an order requiring the debtor to file a certification which fully complied with the requirements of § 109(h)(3) within fourteen days or the case would be dismissed without further notice or hearing. The debtor failed to do so, and the court did precisely what it said

it would do; on July 14, 2006, it dismissed the case.

On July 18, 2006, the debtor filed a certificate of completion of credit counseling, indicating that he completed credit counseling on that day, and a motion describing what he believes were exigent circumstances. This motion states that the debtor was experiencing financial difficulties when he filed the case, was out of money, unemployed, and involved in some type of eviction proceeding in state court. The court construes this as some type of belated response to the order of June 27, 2006 and a motion to alter or amend or for relief from the order of dismissal. See e.e., Fed R. Bankr P. Rule 9023, 9024. Whatever its characterization, however, it is not sufficient. Even when the court overlooks the unexplained lateness in providing information that was due by July 11, the debtor has still failed to satisfactorily demonstrate that he qualified for a temporary waiver of the credit counseling requirement of § 109(h)(1). Thus, he was not eligible for relief under title 11 when this case was filed.

The information debtor has provided fails to satisfy the requirements of § 109(h)(3). To do so, the certification must state both the exigent circumstances which necessitated the immediate filing of this case and that the debtor requested credit counseling but was unable to receive it within five days of doing so.<sup>1</sup> The debtor has done neither of these things. Although the debtor states that there was some sort of eviction action pending against him in small claims court, he has failed to provide the necessary detail concerning the status of that action to demonstrate why it necessitated filing of the petition without waiting to obtain credit counseling. Even if the proceeding would qualify as exigent circumstances, the debtor has failed to indicate that he unsuccessfully sought credit counseling prior to filing this case or that he made any effort to obtain that counseling before filing.

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<sup>1</sup>The certification must also be satisfactory to the court. 11 U.S.C. § 109(h)(3).

Thus, at the time this case was filed, the debtor was not eligible for relief under title 11.

The debtor's motion is DENIED.

SO ORDERED.

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