


The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



  
John P. Gustafson  
United States Bankruptcy Judge

**Dated: November 6 2014**

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

<b>In Re:</b>	)	<b>Case No. 14-33459</b>
	)	
Sharon A. Spinks,	)	<b>Chapter 7</b>
	)	
<b>Debtor.</b>	)	<b>JUDGE JOHN P. GUSTAFSON</b>

**ORDER**

This case is before the court on Debtor's Application for Waiver of the Chapter 7 Filing Fee ("Application") due to in forma pauperis ("IFP") status. [Doc. #4]. The court has the discretion under 28 U.S.C. §1930(f)(1) to waive the filing fee for a Chapter 7 case where the debtor has income less than 150 percent of the income official poverty line applicable to the size of family involved. *See also*, Fed.R.Bankr.P. 1006(c).

Section 1930(f)(1) provides:

(f)(1) Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the term "filing fee" means the filing fee required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of

a case under chapter 7.

In considering Debtor's Application, the Court must be cognizant of certain policy concerns. Bankruptcy filing fees, collected at the time of filing, are divided amongst the Judiciary, the U.S. Trustee System Fund, the general fund of the U.S. Treasury, and the private trustee assigned to a Chapter 7 case. They are a necessity for the effective and continued administration of the bankruptcy courts. Due to the reliance on filing fees to help self-fund the bankruptcy court, which in turn helps to alleviate or greatly reduce the need for taxpayer funding, "strong public policy considerations weigh in favor of requiring that debtors pay filing fees in all instances except when they clearly meet the statutory criteria for a waiver." *In re Henretty*, 456 B.R. 224, 227 (Bankr. W.D. Pa. 2011).

In filing fee waiver cases, the Debtor bears the burden of proving by a preponderance of the evidence that his or her circumstances satisfy the requirements of the fee waiver provision. *In re Burr*, 344 B.R. 234, 236 (Bankr. W.D. N.Y. 2006); *In re Nuttall*, 334 B.R. 921, 923 (Bankr. W.D. Mo. 2005). In other words, a Debtor must establish that his or her income is below 150% of the poverty line and that he or she is unable to pay the filing fee in installments. *In re Kauffman*, 354 B.R. 682, 685-86 (Bankr. D. Vt. 2006); *In re Williams*, 2013 WL 1683659 (Bankr. E.D. Wis. April 17, 2013). See also, *Judicial Conference of the United States Final Procedures Regarding the Chapter 7 Waiver Provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, Guide to Judiciary Policy, Vol. 4, §820 et seq.

Here, Debtor's stated net monthly income is \$3,123.41, and the identified family size is 4. For a family of this size, 150 percent of the income official poverty guideline is \$2,981.25. Looking at the income figures, this case would be inappropriate for waiver of the case filing fee on the basis of in forma pauperis status, as the Debtor's income is not below 150% of the poverty line.

However, Debtor's counsel argues that the \$3,123.41 includes mileage reimbursement, which is more in the nature of an offset of an expense. In addition to wages of \$2,312.15, the Debtor has two other sources of income. First, there is a contribution from a significant other listed, in the amount of \$807.50. The "significant other" is not listed as part of the Debtor's "family size". Second, is the reimbursement for mileage of \$221 per month. [Doc. #1, p. 40].

In the newly adopted<sup>1</sup> *Final Procedures Regarding the Chapter 7 Waiver Provisions*, §820(a)(2), the Judicial Conference guidance states:

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<sup>1</sup>/ *JCUS-SEP 13*, pp.8-9, available at, <http://www.uscourts.gov/FederalCourts/JudicialConference/Proceedings/Proceedings.aspx?doc=/uscourts/FederalCourts/judconf/proceedings/2013-09.pdf>.

(2) The DHHS does not publish a standard definition of income, leaving the determination of that definition to individual program administrators. These procedures adopt a definition that is reasonable in the bankruptcy context. The income for comparison to the poverty guidelines is the “Total Combined Monthly Income” as reported (or as will be reported) on Schedule I. Amounts received as non-cash government assistance must be deducted from the total amount reported on Schedule I for fee waiver consideration.

A properly completed statement of “Total Combined Monthly Income” on Schedule I should include the income from mileage reimbursement. *See generally, In re Tinsley*, 428 B.R. 689 (Bankr. W.D. Va. 2010)(below median Chapter 13 debtor ordered to amend Schedule I to include mileage reimbursement income). While the income from mileage reimbursement may, for many bankruptcy purposes, be offset by expense of the travel, there is no expense component to the “150% of the HHS Poverty Guidelines” test. The second part of the test - whether the debtor “is unable to pay the fee in installments”<sup>2</sup> - only come into play after debtors show that they are below the income threshold.

In addition, the specific direction to deduct non-cash government assistance “from the total amount reported on Schedule I for fee waiver consideration”, strongly suggests that other kinds of income must be included<sup>3</sup> for IFP purposes. *See, Final Procedures Regarding the Chapter 7 Waiver Provisions*, §820(a)(2).

Because Debtor did not meet the in forma pauperis eligibility rule for income at the time she filed her bankruptcy petition, her Application is denied.

The court will, however, allow the filing fee to be paid in installments, as set forth below. The fee will be owed even if the case is dismissed. Failure to pay the fee may result in dismissal, and the court will not enter a discharge unless and until the whole fee is paid even if the case is not dismissed.

**IT IS THEREFORE ORDERED** that Debtor’s Application for Waiver of the Chapter 7 Filing Fee [Doc. #4] is **DENIED**. Debtor must pay the filing fee in installments, as follows:

\$83.75 due by November 28, 2014

\$83.75 due by December 30, 2014

\$83.75 due by January 30, 2015

\$83.75 due by February 27, 2015

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<sup>2/</sup> *Final Procedures Regarding the Chapter 7 Waiver Provisions*, §820(a)(1)(B).

<sup>3/</sup> This is structurally similar to the specific exclusion of Social Security income in defining “current monthly income” in Section 101(10A). *See, In re Briggs*, 440 B.R. 490, 495-96 (Bankr. N.D. Ohio 2010), *citing, Blausey v. U.S. Trustee*, 552 F.3d 1124, 1133 (9th Cir.2009). Other income - even income that serves essentially the same purpose as Social Security - is not excluded. *See, In re Moose*, 2012 WL 954713, 2012 Bankr. LEXIS 1175 (Bankr. M.D.N.C. March 20, 2012).

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