

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
* CASE NUMBER 06-40028
HILDA LEE BROGDON, *
* CHAPTER 13
*
Debtor. * THE HONORABLE KAY WOODS
*

ORDER FINDING EXIGENT CIRCUMSTANCES

The matter before the Court is the request by Debtor Hilda Lee Brogdon ("Debtor") for a waiver, pursuant to 11 U.S.C. § 109(h)(3)(A), of the requirement in 11 U.S.C. § 109(h)(1). Section 109(h)(1) requires the Debtor to receive, "during the 180-day period preceding the date of filing of the petition . . . from an approved nonprofit budget and credit counseling agency . . . an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling." 11 U.S.C. § 109(h)(1).

Section 109(h)(3)(A) states that the requirements in § 109(h)(1) shall not apply to a debtor who "submits to the court a certification that - describes exigent circumstances that merit a waiver" of the pre-petition credit counseling requirement. Section 109(h)(3)(A) sets forth what must be included in the certification in order to obtain a waiver of the requirement in § 109(h)(1). These criteria are: (i) a description of exigent circumstances, (ii) that debtor requested credit counseling from an approved credit

counseling agency, but was unable to obtain such counseling services during the five-day period beginning on the date on which the debtor made the request, and (iii) that the certification is satisfactory to the court.

Debtor filed a voluntary petition pursuant to Chapter 13 of the Bankruptcy Code on January 13, 2006. On February 22, 2006, Debtor filed Certification Pursuant to 11 U.S.C. § 109(h)(3), which was dated January 11, 2006, and was signed by Debtor. The Certification stated that Debtor was not able to obtain credit counseling services until January 17, 2006, however, it was not clear to the Court from the information in the Certification why the Debtor was not able to obtain such services prior to filing her petition. As a consequence, this Court held a hearing on April 27, 2006 to determine if Debtor should be granted a waiver of the credit counseling requirement in § 109(h)(1). At the hearing, counsel for Debtor provided additional information that had not been included in the Certification filed on February 22, 2006. In particular, counsel explained that Debtor was an elderly woman who had impaired vision and impaired hearing and, as a consequence, was not able to obtain credit counseling services by telephone or over the Internet, but had to obtain such services in person. Counsel further represented that Debtor was faced with the immediate threat of having her heat disconnected and her wages garnished, which would have severely and immediately impacted her ability to procure the basic necessities. Counsel for Debtor stated that she contacted an approved credit counseling agency, but was not able to obtain

in-person counseling services within the five-day period after she contacted the agency and such services were not available before her heat was to be disconnected. Based on this explanation, the Court requested Debtor to supplement the Certification.

Debtor filed Supplemental Certificate of Exigent Circumstances 11 U.S.C. § 109(h)(3) ("Supplemental Certificate") on May 18, 2006. Based upon the original Certification and the Supplemental Certificate, as well as the record of the April 27, 2006 hearing, this Court finds that, pursuant to § 109(h)(3)(A), Debtor:

- (i) described exigent circumstances that merit a waiver of the requirement in § 109(h)(1);
- (ii) requested credit counseling services from an approved credit counseling agency, but was not able to obtain such services in the 5-day period beginning on the date Debtor made the request; and
- (iii) provided a certification that is satisfactory to the Court.

As a consequence, this Court finds and holds that the requirements in 11 U.S.C. § 109(h)(1) do not apply to Debtor and that the credit counseling she received subsequent to filing the petition, as evidenced by the Credit Counseling Certificate Debtor filed with the Court, is sufficient to meet the requirements of 11 U.S.C. § 109.

IT IS SO ORDERED.

HONORABLE KAY WOODS

UNITED STATES BANKRUPTCY JUDGE