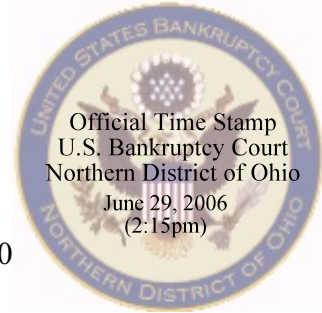


THIS OPINION NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:)	Case No. 06-11770
)	
BARBARA L. BEAR,)	Chapter 7
)	
Debtor.)	Judge Pat E. Morgenstern-Clarren
)	
)	<u>MEMORANDUM OF OPINION</u>

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 generally requires individuals to obtain credit counseling before filing a bankruptcy case. *See* 11 U.S.C. § 109(h)(1). The debtor Barbara Bear, *pro se*, requests that the requirement be waived based on the alleged existence of exigent circumstances. *See* 11 U.S.C. § 109(h)(3)(A). The United States trustee objects to the request for a waiver and moves to dismiss for failure to comply with § 109(h)(1).¹ For the reasons stated below, the debtor’s request for relief is denied and the trustee’s motion to dismiss is granted.

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

FACTS

The debtor filed her Chapter 7 petition on May 11, 2006. On the same day, the debtor filed a “certification concerning exigent circumstances” in which she requests a waiver of the

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mandatory budget and counseling based on these circumstances:

1. My employment requires me to work 45-50 hours per week and does not allow for day time appointments.
2. My current debt's minimum payments exceed my take home pay and prevent payments to necessary monthly expenses.²

The United States trustee objected to the debtor's request on the grounds that the reasons stated do not qualify as exigent circumstances and the debtor did not state that she tried to obtain credit counseling before filing her petition but was unable to. The trustee then moved to dismiss the case for failure to comply with 11 U.S.C. § 109(h)(1). The debtor filed a response.

The court held a hearing on June 22, 2006, at which both the debtor and counsel for the United States trustee appeared. The trustee reiterated his position that the debtor failed to establish exigent circumstances, noting that there are approximately 20 approved credit counseling agencies for this area listed on the trustee's website, about 15 of which offer either online or telephone services seven days a week and at all hours. The trustee further stated that the credit counseling requirement is for one course lasting up to 90 minutes. The debtor did not challenge these factual statements.

DISCUSSION

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) requires an individual wishing to file for protection under the bankruptcy law to obtain budget and credit counseling within 180 days before filing, with certain exceptions. *See* 11 U.S.C. § 109(h)(1). One exception is if the debtor submits a certificate that: (1) describes exigent circumstances that merit a waiver of the requirement; (2) states that the debtor requested the

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counseling, but was unable to obtain it during the five days following the request; and (3) is satisfactory to the court. 11 U.S.C. § 109(h)(3)(A). A debtor who falls within this exception has up to 45 days after filing to comply with the counseling requirements. 11 U.S.C. § 109(h)(3)(B). A certification that does not meet the first and second requirements cannot be “satisfactory to the court.” *In re Burrell*, 339 B.R. 664, 667 (Bankr. W.D. Mich. 2006).

The bankruptcy code does not define “exigent circumstances.” In such a situation, courts routinely look to dictionaries for guidance. *See, for example, Rousey v. Jacoway*, 544 U.S. 320, 326 (2005). Turning to Black’s Law Dictionary, one bankruptcy court in the Sixth Circuit adopted this definition of exigent circumstances: “[a] situation that demands unusual or immediate action and that may allow people to circumvent usual procedures” *In re Cleaver*, 333 B.R. 430, 435 (Bankr. S.D. Oh. 2005) (quoting Black’s Law Dictionary 236 (7th ed. 1999)). The *Cleaver* court then held that, in this context, exigent circumstances exist where the debtor faces some sort of immediate collection activity, such as the impending foreclosure sale of a house. *Id.* This court agrees with and adopts that reasoning.

In this case, the debtor did not show exigent circumstances that would excuse her from the required prefiling counseling. The debtor relies solely on her work schedule. Although the court understands that the debtor devotes a significant amount of time to her work, the new law accommodates that situation by providing that counseling may be done over the telephone or via the internet as well as in person. These services are available in the evenings and on weekends. The availability of these services through various media and the fact that completing the course typically takes no longer than 90 minutes weighs heavily in favor of finding that the debtor’s 40-50 hour work week does not establish exigent circumstances. Moreover, the debtor did not meet

the second requirement of § 109(h)(3)(B) because she did not state that she tried to obtain counseling prepetition, but was unable to do so prior to filing.

Absent exigent circumstances, the law provides that the debtor should have waited to file her petition until after she completed the counseling and that without it she is not eligible to be a debtor. Although the debtor stated in her response to the trustee's motion that she was not aware that the requirement is mandatory, there is nothing in the law as written to suggest that lack of knowledge excuses compliance.

The court notes that the debtor has since completed the required course. Unfortunately, that does not change the result here. The language of the statute plainly requires a debtor to complete the counseling before, not after, the filing absent the presence of exceptional circumstances. If courts grant relief under § 109(h)(3)(B) by accepting postpetition counseling under other than the articulated exceptions, the prepetition counseling requirement would be rendered meaningless.

The court is also aware that the debtor may be immediately eligible to file another case, using the recently-obtained counseling to support her petition. If so, the debtor *may*³ be in a position similar to the one she would be in if this case goes forward, except that she will have to pay a second filing fee. One can agree or disagree with whether it makes sense to require the debtor to jump through that procedural hoop and incur additional expense, but that is the law Congress wrote and that this court must follow.

³ The court emphasizes that the debtor should carefully consider the legal implications of an immediate second filing under BAPCPA.

CONCLUSION

For the reasons stated, the debtor's certification of exigent circumstances requesting relief from the prepetition credit counseling requirement is denied. The trustee's motion to dismiss for failure to comply with 11 U.S.C. § 109(h)(1) is granted. Should the debtor wish to file a new chapter 7 case, she may use the certificate of credit counseling that she completed to support the new petition.

A separate order will be entered reflecting this decision.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

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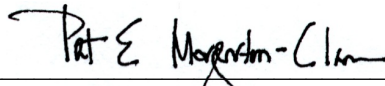
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 06-11770
)
BARBARA L. BEAR,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **ORDER**
)

For the reasons stated in the memorandum of opinion filed this same date, the debtor's certification of exigent circumstances requesting relief from the prepetition credit counseling requirement is denied, and the trustee's motion to dismiss for failure to comply with 11 U.S.C. § 109(h)(1) is granted.

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge