

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.



Dated: September 07 2006

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 06-31684
)	
Stephanie A. Swan,)	Chapter 7
)	
Debtor.)	
)	JUDGE MARY ANN WHIPPLE

ORDER CONFIRMING AUTOMATIC DISMISSAL

This matter is before the court on a Motion To Dismiss Chapter 7 Petition (“Motion”) [Doc. # 12] filed by the Chapter 7 Trustee under 11 U.S.C. § 521(i)(2). For the reasons that follow, the Motion will be granted.

Under § 521(a)(1), as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), a debtor must file “copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor.” A debtor’s failure to do so within 45 days after the date the petition is filed results in an automatic dismissal effective on the 46th day after the petition is filed, subject to § 521(i)(2) and (4). 11 U.S.C. § 521(i)(1). Notwithstanding that the dismissal is automatic, “any party in interest may request the court to enter an order dismissing the case,” and, if requested, “the court shall enter an order of dismissal not later than 5 days after such request.” *Id.* § 521(i)(2). However, “upon request of the debtor made within 45 days

after the date of the filing of the petition . . . , the court may allow the debtor an additional period of not to exceed 45 days to file the information required under [521(a)(1)] if the court finds justification for extending the period for filing. *Id.* § 521(i)(3). In addition, on motion of the trustee filed before the expiration of the applicable time periods specified in § 521(i)(1), (2) or (3), the court may decline to dismiss the case if the debtor made a good faith effort to file the required information and the best interests of creditors would be served by administration of the case.

In this case, Debtor filed her Chapter 7 petition on July 7, 2006. The 45th day after such filing was August 21, 2006. In support of the Motion, the Trustee offers an Affidavit, as required by General Order 05-5, verifying that Debtor has failed to file all of the payment advices required to be filed within the 45-day period after filing her petition. She has filed no payment advices for the period from May 7, 2006, through July 7, 2006. Debtor did not request an extension of time within 45 days after filing her petition as is required under § 521(i)(3) in order to file payment advices outside of that 45-day period. Nevertheless, Debtor opposes the Trustee's Motion, arguing that she attempted in good faith to file the required information and that she did not discover until August 24, 2006, at the time set for the first meeting of creditors, that the pay advices had not actually been filed.

While at least one court has interpreted the provisions of § 521(i)(1) and (4) to permit the court to decline to dismiss the case if, on motion of the trustee filed before the expiration of the 5-day period within which the court must enter an order of dismissal under § 521(i)(2), the court finds that a debtor has made a good-faith effort to file the payment advices and the best interests of creditors would be served by administration of the case, *see In re Jackson*, – B.R. –, 2006 WL 2501440, *7-8 (Bankr. S.D. Iowa 2006), the Chapter 7 trustee has not filed such a motion and the statute does not permit the court to exercise its discretion on motion or request of the debtor. Indeed, in this case the Chapter 7 Trustee has made the request for dismissal, perhaps because she does not want to administer the estate with the cloud of uncertainty arising from the concept of automatic dismissal under § 521(i)(1) lurking overhead. This uncertainty could likewise be a problem for Debtor in the future.

To the extent that Debtor seeks an extension of time to file the payment advices under the “excusable neglect” provisions of Fed. R. Bankr. P. 9006(b), Rule 9006(b)(1) only permits the court to enlarge time “when an act is required or allowed to be done at or within a specified period *by these rules* or by a notice given thereunder or by order of court.” “Rule 9006(b) does not allow courts to enlarge time periods expressly set forth in the Code.” *In re Fawson*, 338 B.R. 505, 514 (Bankr. D. Utah 2006). Although the

court believes that dismissal is a harsh penalty to pay where there is no prejudice resulting from a debtor's failure to file all payment advices, Congress has left the court with no discretion. *See In re Ott*, 343 B.R. 264, 265-68 (Bankr. D. Colo. 2006) (noting that Congress created a law that is sometimes self-executing, inflexible, and unforgiving); *In re Lovato*, 343 B.R. 268, 270 (Bankr. D. N.M. 2006); *Fawson*, 338 B.R. at 511; *In re Conner*, 2006 WL 1548620 (Bankr. N.D. Fla. 2006). Under § 521(i), this case was automatically dismissed by operation of the statute, effective on August 15, 2006, the 46th day after Debtor's petition was filed. *See Fawson*, 338 B.R. at 510.

THEREFORE, for the foregoing reasons, good cause appearing,

IT IS ORDERED that the Motion To Dismiss Chapter 7 Petition [Doc. # 12] be, and hereby is **GRANTED**; and

IT IS FURTHER ORDERED that this case is automatically **DISMISSED**.