

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 14 2006

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 06-31469
)	
Thomas M. Snyder,)	Chapter 7
Debra G. Snyder,)	
)	
Debtors.)	JUDGE MARY ANN WHIPPLE

ORDER CONFIRMING AUTOMATIC DISMISSAL

This matter is before the court on a Motion Requesting Order Dismissing Chapter 7 Case Pursuant to 11 U.S.C. § 521 (“Motion”) [Doc. # 13] filed by the United States Trustee (“UST”). For the reasons that follow, the Motion will be granted in part and denied in part.

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. 11 U.S.C. § 521(i)(4).

In this case, Debtors filed their joint Chapter 7 petition on June 19, 2006. The 45th day after such filing was August 3, 2006. In support of the Motion, the UST offers an Affidavit, as required by General Order 05-5, verifying that Debra Snyder has failed to file all of the payment advices required to be filed within the 45-day period after filing the petition. She filed payment advices for periods prior to the applicable 60-day period, but has filed no payment advices for the period from April 19, 2006, through June 19, 2006, the 60-day period immediately preceding the filing of the petition. Ms. Snyder has not requested an extension of time to do so, not to mention an extension of time within 45 days after filing the petition as is required under § 521(i)(3) in order to file payment advices outside of that 45-day period. And this court has no discretion to grant an extension after the expiration of the 45-day limit in § 521(i)(3). *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); *In re Fawson*, 338 B.R. 505, 511 (Bankr. D. Utah 2006); *In re Conner*, 2006 WL 1548620 (Bankr. N.D. Fla. 2006). 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 August 28, 2006), the Chapter 7 trustee has not filed such a motion. Consequently, this case, at least with respect to Debra Snyder, was automatically dismissed by operation of the statute, effective on August 4, 2006, the 46th day after Debtor's petition was filed. *See Fawson*, 338 B.R. at 510. 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).

However, as the UST's motion recognizes, the record indicates that Thomas Snyder is unemployed. Although he has submitted evidence of payments received from the Office of Unemployment Compensation

only for periods prior to the 60-day period preceding the filing of his petition, § 521(a)(1)(B)(iv) only requires a debtor to file payment advices received from an employer of the debtor. Thus, the dismissal provisions under § 521(i) do not apply to him.

THEREFORE, for the foregoing reasons, good cause appearing,

IT IS ORDERED that the Motion Requesting Order Dismissing Chapter 7 Case [Doc. # 14] be, and hereby is **GRANTED** with respect to Debra G. Snyder and **DENIED** with respect to Thomas M. Snyder; and

IT IS FURTHER ORDERED that this case is automatically **DISMISSED** with respect to Debra G. Snyder only.