

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: July 19 2007

A blue ink signature of Mary Ann Whipple, written in a cursive style.

Mary Ann Whipple
United States Bankruptcy Judge

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

In Re)	Case No. 07-32858
)	
Dawn M. Sparks,)	Chapter 7
)	
Debtor(s))	JUDGE MARY ANN WHIPPLE
)	

ORDER OF DISMISSAL

This matter comes before the court sua sponte on its review of the docket for purposes of ascertaining Debtor's compliance with the requirements to participate in an individual or group briefing provided by an approved budget and nonprofit credit counseling agency and to file a certificate evidencing such participation. The briefing is required by 11 U.S.C. § 109(h)(1) as a condition of eligibility for an individual even to be a debtor under Title 11. *See In re Dixon*, 338 B.R. 383, 389 (8th Cir. B.A.P. 2006); *see also* 11 U.S.C. § 521(b); Rev. Local Interim Rule 1007(b) and (c).

On July 3, 2007, Debtor filed Exhibit D to her petition. She checked box 2 on Exhibit D, stating that she had participated in an approved budget and credit counseling briefing from an approved agency during the 180 day period preceding the commencement of the case, but that she had not received the certificate of participation from the provider. She was then required to file the certificate evidencing her compliance with this eligibility requirement, as well as the plan developed by the approved agency if any, 11 U.S.C. § 521(b), within 15 days of filing the petition, Rev. Local Interim Rule 1007(b)(3) and (c). Under § 521(b) the filing of the certificate and the plan are additional statutory requirements implementing the individual debtor eligibility requirement of § 109(h)(1). The box Debtor checked on Exhibit D to her petition also re-states this

filing requirement.

More than 15 days have now elapsed from filing of the petition on July 3, 2007, and these documents have still not been filed with the court. No request for an enlargement of time has been filed under Rule 9006(b)(1).¹ In the absence of the certificate filed with the court as required by the statute and the applicable rules, the court presumes that Debtor did not timely complete the required course pre-petition and is not eligible to be a debtor under any chapter of Title 11 of the United States Code pursuant to the requirements of 11 U.S.C. § 109(h)(1). The proper remedy for lack of eligibility under § 109(h)(1) is dismissal. *See Dixon*, 338 B.R. at 389.

It is **THEREFORE ORDERED** that the above captioned Chapter 7 case be, and hereby is, **DISMISSED**, under 11 U.S.C. § 109(h); and

It is **FURTHER ORDERED** that the Clerk, U.S. Bankruptcy Court, serve a notice of this Order of Dismissal upon the Debtor, Debtor's counsel, the Chapter 7 Trustee, the United states Trustee and all Creditors and parties in interest.

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If Debtor has in fact participated in the required briefing, as no request for an extension of time was filed within the time allowed by Rev. Interim Local Rule 1007 for filing the certificate, an extension would now be permissible only upon a showing of excusable neglect, Rule 9006(b)(1). Excusable neglect would be the same standard for vacation of this order of dismissal should it be sought under Rule 60(b)(1) of the Federal Rules of Civil Procedure, as applicable under Rule 9024 of the Federal Rules of Bankruptcy Procedure. As a result, no order to show cause is appropriate as it would effectively grant Debtor an unrequested and perhaps unjustified extension of time for filing the certificate without the requisite showing of excusable neglect.