

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT



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In re:

**Mark and Tammi Stockwell  
Debtors.**

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**Chapter 7 Case  
# 06-10002**

**ORDER**  
**DENYING DEBTOR'S MOTION FOR WAIVER**  
**OF PERSONAL FINANCIAL MANAGEMENT COURSE REQUIREMENT**  
**WITHOUT PREJUDICE**

On March 10, 2006, the Debtor filed a motion (doc. # 14) seeking a waiver of the requirement that Tammi Stockwell (hereinafter the "Debtor") complete a personal financial management course of the type described in 11 U.S.C. § 111 (the "Motion"). The Motion is brief and the Court therefore sets it forth in full:

Now comes Tammi Stockwell, by and through Michelle Kainen, and prays that the court waive the requirement for the Financial Management course as follows:

1. Mrs. Stockwell is currently disabled;
2. She has been undergoing treatment for a brain tumor. She recently began having seizures secondary to the tumor, and is heavily medicated to control the seizures. The medication makes it difficult for her to complete her activities of daily living without assistance;
3. Mrs. Stockwell was unable to attend the Meeting of Creditors in this matter, because just days prior to that she lost her vision entirely. At that time it was thought to be related to the medication for the brain tumor. Since then it was learned that this is a hereditary condition affecting the optic nerve, and is separate and apart from the brain tumor;
4. It was originally hoped that these issues would resolve to a degree that she could complete the Financial Management Course. With the deadline looming, it has become apparent that she cannot complete it.

The Court set a hearing on the Motion for April 25, 2006. At the hearing, the Court inquired of the Debtor's attorney as to whether she had any medical evidence to support the allegations of the Motion. Counsel responded that she had a medical report (the "Report") which she did not want made part of the record but which she would present for in camera review. Although both Mr. and Mrs. Stockwell were present at the hearing, counsel did not call either to testify. Counsel made a proffer that if the Debtor's family were to testify they would affirm the Debtor's condition today is unchanged from the Report's description.

The Court took the matter under advisement in order to review the Report in camera and make a determination of whether the Debtor met the criteria for a waiver as set forth in 11 U.S.C. §§ 727(a)(11), 109(h)(4).

After a review of the case law, it appears that no court has directly addressed a motion for a waiver of the personal financial management course due to “disability” or “incapacity” as set forth in 11 U.S.C. § 109(h)(4). The Court therefore treats the Motion as a matter of first impression.

The statutory requirements at issue in the Motion were imposed by the Bankruptcy Abuse Prevention and Consumer Protection Act, S. 256, Pub. L. No 109-8, 119 Stat. 23 (“BAPCPA”) and provide as follows:

11 U.S.C. § 727(a) The Court shall grant the debtor a discharge, unless –

...

(11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who is a person described in section 109(h)(4) . . .

11 U.S.C. §109(h)

...

(4) The requirements of paragraph 1 [of §109(h)] shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone. For purposes of this paragraph, “incapacity” means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to her financial responsibilities; and “disability” means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in person, telephone or Internet briefing required under paragraph 1 [of § 109(h)].

Although neither of these provisions, nor the legislative history, sets forth the nature or level of proof required to demonstrate the requisite disability or incapacity, the Court finds that since the statute requires the determination be made “after notice and hearing,” the mere allegations of an attorney are insufficient. The Court further finds that a medical report documenting the disability or incapacity may be sufficient. Accordingly, the Court turns to the sufficiency of the Report to establish one of the statutory predicates.

The Court has reviewed the Report, summarizing the results of a November 2004 neuropsychological re-evaluation performed at the Dartmouth Medical School, and finds that it does not describe a person who “is impaired by reason of mental illness or mental deficiency so that [she] is incapable of realizing and making rational decisions with respect to [her] financial responsibilities” nor “so physically impaired as to be unable, after reasonable effort, to participate in” a personal financial management course.

Since the report was submitted for in camera review only, the Court will not set forth any of the specific conclusions of the Report, however, it will observe that the vast majority of findings in the Report identify the Debtor’s abilities to be within the average range. Therefore, the Court finds that the record does

not support a determination that the Debtor is incapacitated for purposes of §109(h)(4).

The Debtor's attorney has also stated in the Motion, and at the hearing, that the Debtor is legally blind and therefore should be eligible for a waiver of the personal financial management course by virtue of this physical disability. However, there is nothing in the record to verify that the Debtor is blind, nor to affirm that there are no personal financial management courses available in which she could, after reasonable effort, participate, eg., courses designed for persons who are visually impaired. Therefore, the Court finds that the record likewise fails to support a determination that the Debtor is disabled for purposes of §109(h)(4).

In imposing the requirement for the personal financial management, Congress clearly intended that the requirement could be waived if the Debtor had cognitive or physical disabilities is unable to complete the course. The Motion alleges facts that would appear to warrant a waiver. However, since the Debtor has not introduced any evidence to establish those allegations, the Court must deny the Motion.

Accordingly, IT IS HEREBY ORDERED that the Motion is denied, without prejudice to the Debtor's right to renew the Motion and present evidence to demonstrate incapacity or disability as defined in the statute.

April 26, 2006  
Rutland, Vermont

  
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Colleen A. Brown  
United States Bankruptcy Judge