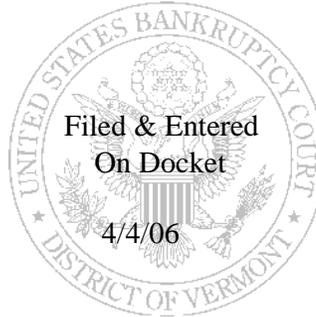


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

**Kathleen A. Davey,
Debtor.**



**Chapter 7 Case
06-10065**

Appearances: *John Toscano, Esq.
Bennington, VT
for the Debtor*

*Eric Small, Esq.
Albany, NY
for the United States Trustee*

**ORDER WITHDRAWING ORDER TO SHOW CAUSE,
DENYING MOTION TO EXTEND TIME, AND
DECLARING THE DEBTOR ELIGIBLE FOR CHAPTER 7 RELIEF**

On March 1, 2006, the Debtor filed a petition seeking relief under chapter 7 of the Bankruptcy Code. The Debtor marked the box on page 2 of her petition indicating that she had received consumer credit counseling during the 180-day period prior to the filing of her case, as required by § 109(h)(1). However, the Debtor did not file a certificate of credit counseling with her petition Bankruptcy Rule 1007(b)(3) and (c). The consumer credit counseling requirement was added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) and, in the absence of exigent circumstances¹, unequivocally requires each individual seeking bankruptcy relief to obtain the consumer credit counseling and file a certificate thereof as a predicate of eligibility for bankruptcy relief.

(h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing of the petition by such individual received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

11 U.S.C. § 109(h)(1); See also In re Henderson, 2006 WL 687164 (Bankr. E.D.N.Y 2006). It is the duty of the United States Trustee to certify and oversee the agencies providing the consumer credit counseling referred to in § 109(h). See 11 U.S.C. § 111.

On March 7, 2006, the Court issued an order to show cause, directing the Debtor to appear and show cause why this chapter 7 case should not be dismissed based upon the Debtor’s apparent ineligibility for

¹ 11 U.S.C. § 109(h)(3) sets forth the procedure for obtaining a waiver of the counseling requirement and the requirement for exigent circumstances.

relief, as demonstrated by her failure to file a certificate of credit counseling. The Office of the United States Trustee appeared at the hearing in support of dismissal of the case. The Debtor appeared at the hearing in opposition to dismissal. The Debtor explained that she obtained credit counseling from the Consumer Credit Counseling Service of New Hampshire & Vermont on December 21, 2005, and filed her petition on March 1, 2006, under the impression that she was in compliance with the requirement of counseling within 180 days of the petition. The Debtor also informed the Court that after receiving the order to show cause she contacted the Consumer Credit Counseling Service of New Hampshire & Vermont to request the certificate and was told that they could not issue a certificate unless she underwent an additional credit counseling session that was specifically designed to meet the § 109 requirements. The Debtor did so, and filed a certificate showing completion of the credit counseling session on March 10, 2006. Of course, that counseling was not conducted prior to the filing of the petition and thus, on its face, would appear to be insufficient to satisfy the eligibility requirement of the new law. However, Debtor's counsel asserted that based upon his inquiry, it appeared that the two counseling sessions, and the report issued to the Debtor after each one, were for all intents and purposes identical. This caused both the Court and the United States Trustee to question whether the lack of a certificate evidencing the requisite pre-petition counseling was due to the Debtor's failure to obtain the counseling or the counseling agency's refusal to issue the certificate. Therefore, the Court granted the Debtor and the United States Trustee the opportunity to investigate the circumstances surrounding the pre-petition counseling session, the lack of a certificate related to that counseling and the Debtor's compliance with the eligibility requirements.

After considering the memoranda of law filed by the United States Trustee and the Debtor, and the Statement of the United States Trustee with regard to the Debtor's compliance, the Court is persuaded that the Debtor has complied with the requirements of § 109(h) and any defect was caused by the counseling agency. The United States Trustee analyzed the § 109(h) requirement, in the context of the facts presented, as follows:

5. The United States Trustee's records reflect that CCCS was approved by the United States Trustee as provided in 11 U.S.C. § 111 to provide the credit counseling specified in 11 U.S.C. § 109(h)(1) effective on December 8, 2005.
6. The United States Trustee has reviewed the documents appended to the debtor's motion, and has telephonically interviewed two different employees of CCCS, and has concluded that the debtor received the credit counseling described in 11 U.S.C. § 109(h)(1) on December 22, 2006.
7. It also appears that the debtor participated in a second session of credit counseling on March 10, 2006.
8. While it is noted that the credit counseling certificate now filed with the Court reflects only the March 10, 2006 session, which would not comply with the statutory pre-petition credit counseling requirement, the United States Trustee does not believe that the omission from the certificate of the December 22, 2005 session changes the fact that by virtue of the earlier counseling session, the debtor complied with the 11 U.S.C. § 109(h) requirement to be a debtor.

WHEREFORE, the United States Trustee does not believe dismissal of the case is appropriate under the facts presented.

doc. # 25.

The requirements of BAPCPA are still quite new, are presented in very complicated and unforgiving terms, and impose particularly burdensome documentary responsibilities upon individual debtors. In this case, the Court finds that the Debtor made a good faith effort to meet her obligation to obtain consumer credit counseling from a certified UST-approved agency within the 180 days prior to filing her chapter 7 petition, and in fact did obtain that counseling during the mandated time frame. It would be unjust to deny her relief because the agency failed to (1) articulate the distinction between “regular” credit counseling and the credit counseling sessions given to comply with the new bankruptcy law, and (2) provide the certificate showing that she had obtained credit counseling pre-petition. The requirement of §109(h) is upon the Debtor to obtain the requisite counseling. She did so. She is therefore eligible for chapter 7 relief.

The Debtor also filed a motion to extend the time by which to obtain the credit counseling to a date after she filed her case, and to treat a certificate of post-petition credit counseling as sufficient to satisfy the §109(h) requirement. That motion is denied on two grounds. First, the statute plainly requires that, in the absence of exigent circumstances not present here, the Debtor must have the consumer credit counseling within 180 days prior to the filing of the petition in order to comply with Court §109(h). Absent exigent circumstances, post-petition counseling does not satisfy § 109(h). Second, and more importantly, the motion is denied as moot, since the Court finds that the Debtor did obtain the requisite counseling pre-petition.

This order resolves all open issues; thus, the continued hearing set on the order to show cause is cancelled.

SO ORDERED.

April 4, 2006
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge