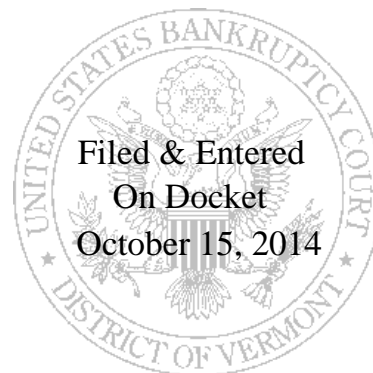


**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



In re:

**Linda R. Grittner
Debtor.**

**Chapter 7 Case
14-10529**

ORDER
GRANTING THE DEBTOR'S MOTION FOR RECONSIDERATION
SUBJECT TO THE DEBTOR TIMELY SUPPLEMENTING THE RECORD

On September 26, 2014, Linda R. Grittner (the "Debtor") filed a voluntary chapter 7 petition and application for waiver of the Chapter 7 filing fee (doc. ## 1, 2). On October 2, 2014, the Court entered an Order denying the Debtor's application for a waiver and directing the Debtor to pay the filing fee in installments beginning on October 17, 2014, and ending on December 31, 2014 (doc. # 8)(the "Order").

On October 8, 2014, the Debtor filed a motion for reconsideration of the Order (doc. # 10). As grounds for reconsideration, the Debtor alleges that as a result of her dire financial situation, coupled with the substantial expense and difficulty the Debtor incurs in caring for her disabled child, the Debtor would not be able to make the required payments on her home and vehicle loans if she is required to pay the filing fee. For purposes of this motion, and based upon the Debtor's schedules, the Court takes this assertion to be true.

As this Court has previously articulated, however, this Court has limited discretion in determining when the Chapter 7 filing fee may be waived:

BAPCPA established a two-pronged test to determine eligibility for a waiver of the chapter 7 bankruptcy case filing fee:

Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line [sic] . . . applicable to a family of the size involved and is unable to pay that fee in installments. . . .

28 U.S.C. § 1930(f)(1). The Debtor bears the burden of proving by a preponderance of the evidence that his circumstances satisfy both requirements of the fee waiver provision. In re Burr, 344 B.R. 234, 236 (Bankr. W.D.N.Y. 2006); In re Nuttall, 334 BR 921, 923 (Bankr. W.D. Mo 2006). Thus, the Debtor must establish that his income is below 150% of the poverty line and that he is unable to pay the filing fee in installments. This Court has previously ruled that the determination of the Debtor's ability to pay is properly made by reference to the totality of the circumstances. In re Kauffman, 354 B.R. 682, 2006 Bankr. LEXIS 2893, 2006 WL 3017316, * 3 (Bankr. D.Vt. Oct. 24, 2006).

In re Machia, 360 B.R. 416, 418 (Bankr. D. Vt. 2007). The allegations set forth in the Debtor's motion establish that, given the totality of the circumstances, it would clearly be a hardship for the Debtor to pay the filing fee, even in installments. However, the motion fails to establish that the Debtor's income is below 150% of the poverty line, and establishing this fact is an absolute prerequisite for this Court waiving the Chapter 7 filing fee.

"In order to qualify under the first prong of the fee waiver test, a Debtor must show that his income is less than 150 percent of the poverty guidelines last published by the United States Department of Health and Human Services (DHHS) applicable to a family of the size involved." Id. According to the DHHS 2014 Poverty Level Guidelines, the poverty level for a family of two is \$15,730. One hundred fifty percent of that figure is \$23,595. The Debtor's Schedule I reveals that her income is \$2,069.13 per month, or \$24,829.56 annually. For purposes of establishing the Debtor's eligibility for a waiver of the filing fee under 28 U.S.C. § 1930(f)(1), the Court subtracts all amounts attributable to non-cash governmental assistance, such as food stamps. See In re Benway, 2011 Bankr. LEXIS 1556 (Bankr. D. Vt. Apr. 19, 2011). Here, the Court subtracts a total of \$58 per month from the Debtor's income, allocable to food stamps and fuel assistance, resulting in a monthly income of \$2,011.13, or an annual income of \$24,133.56. Since \$24,133.56 is greater than one hundred fifty percent of the applicable DHHS 2014 Poverty Level Guideline, i.e., \$23,595, the Debtor is categorically ineligible for a waiver of the Chapter 7 filing fee.

The question presented, however, is whether an additional sum needs to be subtracted from the Debtor's income for computing her eligibility under this first prong of the test. Her Schedule I reflects income of \$82 per month from a "family flexible spending account." Although it appears that this income is not non-cash governmental assistance, neither the Debtor's Schedule I nor the Debtor's motion for reconsideration define or describe the nature of this \$82 of monthly income. Therefore, the Court finds it appropriate to provide the Debtor an opportunity, if she chooses, to supplement the record to establish whether this particular income is non-cash governmental assistance which is excluded from the category of income for purposes of 28 U.S.C. § 1930(f)(1).

"[R]econsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995) (citations omitted). Reconsideration of an earlier decision may be justified when a party can point to "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd., 956 F.2d 1245, 1255 (2d Cir. 1992), cert. denied, 506 U.S. 820, 113 S. Ct. 67, 121 L. Ed. 2d 34 (1992) (citation and quotation omitted). "Reconsideration of a previous order by the court lies squarely within the court's sound discretion." Anwar v. Fairfield Greenwich, Ltd., 745 F. Supp. 2d 379, 382 (S.D.N.Y. 2010) (citing Devlin v. Transp. Comm'ns Int'l Union, 175 F.3d 121, 132 (2d Cir. 1999)).

Here, the Court finds manifest injustice could result if the Court denies the relief the Debtor seeks, and therefore reconsideration is warranted. However, whether the Debtor will ultimately prevail in her application for a fee waiver depends on whether the Debtor can supplement the record with evidence to demonstrate her income level is below the statutory ceiling. If the Debtor can establish that the \$82 of monthly income designated as a family flexible spending account is not properly included as income in the § 1930(f)(1) computation, or otherwise establishes that her income is below the applicable threshold, the Court will grant the Debtor's application for a fee waiver. If the Debtor fails to do so within fourteen days, the Court will deny her application for a fee waiver.

In the event that the Court denies the Debtor's application, the Debtor alternatively seeks an extension of time in which to pay the filing fee until May, 2015. Federal Rule of Bankruptcy Procedure 1006(b)(2) provides that the Court may extend the time of any installment "for cause shown." The Court finds that the Debtor's motion demonstrates good cause to extend the time of her installment payments. However, Federal Rule of Bankruptcy Procedure 1006(b)(2) requires that the last installment payment, even when extended, must be paid not later than 180 days after filing of the petition. Here, the Debtor's petition was filed on September 26, 2014. Therefore, even if the Court grants an extension of time, the Rule would require that the Debtor make her last installment payment by March 25, 2014. The Court will address this question of an extending the time for the Debtor to pay the filing fee installments, if and when the Debtor files a supplement to her fee waiver application. If the Debtor fails to file a supplement, the Court will consider the matter fully submitted as of October 30, 2014 and enter an order denying the application for a waiver of the filing fee based upon the record before the Court.

Based upon the foregoing, IT IS HEREBY ORDERED that

1. the Debtor's motion for reconsideration is GRANTED, on the conditions set forth herein, and

2. if the Debtor chooses to avail herself of the opportunity to file a supplement to her application for a waiver of the Chapter 7 filing fee, she must do so **by October 29, 2014**.

SO ORDERED.

Burlington, Vermont
October 15, 2014



Colleen A. Brown
United States Bankruptcy Judge