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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re)
9 BLOSSEM de GROAT,) Case No. 06-20171-A-7
10) Docket Control No. None
11 Debtor.) Date: Ex Parte
12) Time: Ex Parte
13)

13 **MEMORANDUM**

14 The debtor, an individual, filed a chapter 7 petition on
15 January 26, 2006. The petition was accompanied by a motion
16 requesting that the court waive the requirements of 11 U.S.C. §
17 109(h). That is, the debtor is seeking an order allowing her to
18 file a chapter 7 petition even though she did not receive, during
19 the 180 days preceding the filing of the petition, a "briefing"
20 from an "approved nonprofit budget and credit counseling agency."

21 The motion argues that such a waiver is warranted because
22 the debtor is indigent and because she has "tried debt
23 consolidation in the past and could not afford the minimum
24 payment."

25 Section 109(h) requires that a briefing be received from a
26 credit counseling agency before a chapter 7 petition is filed.
27 The court is given limited discretion to give exemptions from
28 this briefing requirement.

1 If the United States Trustee determines that the approved
2 nonprofit budget and credit counseling agencies for the district
3 are not reasonably able to provide adequate services, section
4 109(h) (2) (A) exempts the debtor from the briefing requirement.
5 This determination is made generally and not on a case-by-case
6 basis. The United States Trustee must review such a
7 determination not less than annually. See 11 U.S.C. §
8 109(h) (2) (B) .

9 The United States Trustee's Internet site,
10 www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm#CA, lists 18
11 different credit counseling agencies that have been approved to
12 provide credit counseling in the Eastern District of California.
13 While many of these agencies are not within the Eastern District,
14 most provide telephonic or Internet briefings as expressly
15 permitted by the statute. See 11 U.S.C. § 109(h) (1) .

16 The court concludes that it cannot exempt the debtor from
17 the requirement of a briefing on the ground that adequate credit
18 counseling services are not available.

19 A debtor may also submit a certification of exigent
20 circumstances meriting, to the satisfaction of the court, a
21 waiver of the briefing provided the debtor requested a briefing
22 but was unable to obtain the counseling services within 5 days of
23 the request. See 11 U.S.C. § 109(h) (3) (A) . Such an exemption
24 expires 30 days after the debtor files the petition, unless the
25 court, for cause, extends the exemption by a further 15 days.
26 See 11 U.S.C. § 109(h) (3) (B) .

27 The requirements of section 109(h) (3) are in the
28 conjunctive: the debtor must show exigent circumstances as well

1 as the inability to obtain credit counseling within 5 days of a
2 request. See In re Watson, 332 B.R. 740 (Bankr. E.D. Va. 2005).

3 In this case, the debtor's motion does not demonstrate that
4 a credit counseling agency failed to provide a briefing within 5
5 days of a request for service.

6 Nor does the motion prove that there are exigent
7 circumstances that warrant permitting the debtor to file her
8 petition and then receive a briefing. The motion argues that the
9 debtor's indigence is an exigent circumstance. However, the cost
10 of the briefing is nominal, approximately \$50. And, in order to
11 be approved by the United States Trustee, every credit counseling
12 agency must agree to offer its services without regard to the
13 debtor's ability to pay it. See 11 U.S.C. § 111(c)(2)(B).

14 Nor is the likelihood that credit counseling will be futile
15 an exigent circumstance. Congress requires that every individual
16 debtor wishing to file for relief under chapters 7 or 13 first
17 receive a credit counseling briefing.

18 To the extent the debtor asks for an exemption under section
19 109(h)(3), her motion must be denied. Even if the court were
20 able to grant the debtor an exemption under section 109(h)(3),
21 the exemption would be a temporary one. The debtor would have to
22 complete the briefing soon after filing her petition.

23 If the court determines, after notice and a hearing, that
24 the debtor cannot satisfy the requirements of section 109(h)(1)
25 because of incapacity, disability, or active military duty in a
26 combat zone, it may grant a permanent exemption from the briefing
27 requirement. See 11 U.S.C. § 109(h)(4).

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1 "Incapacity" is defined as impairment by reason of mental
2 illness or mental deficiency such that the debtor is incapable of
3 realizing and making rational decisions with respect to his or
4 her financial responsibilities. There is nothing in the motion
5 suggesting the debtor suffers from such an incapacity.

6 A "disability" requires that the debtor be so physically
7 disabled as to be unable, after reasonable effort, to participate
8 in an in-person, telephone, or Internet briefing. There is no
9 evidence of such a disability.

10 Nor does the motion, petition, schedules, or statements,
11 indicate that the debtor is serving in the military.

12 Therefore, the court has no basis for granting a permanent
13 exemption from the credit counseling briefing under section
14 109(h) (4) .

15 If a basis for granting a permanent exemption arguably
16 existed, the court could not grant relief until the debtor served
17 her motion on the trustee, the United States Trustee, and all
18 creditors, and set it for hearing. Section 109(h) (4) permits the
19 court to grant a permanent exemption only after "notice and a
20 hearing."

21 A separate order denying the motion will be issued.

22 Dated:

23 By the Court

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Michael S. McManus, Chief Judge
United States Bankruptcy Court
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