

POSTED ON WEBSITE
NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 08-90753-D-7
)
JESSE ADRIAN WAGNER,) DC No. JAW-1
)
Debtor.) Date: June 11, 2008
_____) Time: 10:30 a.m.
Place: 1130 12th St., Ste. C
Modesto, CA 95354

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM DECISION

On April 28, 2008, Jesse Adrian Wagner ("the debtor") initiated this chapter 7 case. At the same time, the debtor filed the required Exhibit D – Individual Debtor's Statement of Compliance with Credit Counseling Requirement. The debtor checked the box indicating that he had requested credit counseling services from an approved agency but was unable to obtain such services during the five days from the time he made the request. Along with his petition and Exhibit D, the debtor submitted a Notice of Motion and Motion for Determination of Waiver of Credit Counseling Services ("the Motion"), in which he set forth what he contends are circumstances justifying a waiver of the credit counseling and debtor education requirements of 11 U.S.C. §§ 109(h)(1) and 727(a)(11). For the following reasons, the court will grant the motion as to both requirements.

/ / /

1 The general rules are that (1) a bankruptcy debtor must
2 obtain credit counseling within the 180-day period preceding the
3 date the petition is filed from an agency approved by the United
4 States Trustee, and (2) as a condition to receiving a chapter 7
5 bankruptcy discharge, a debtor must complete an instructional
6 course in personal financial management. 11 U.S.C. §§ 109(h)(1),
7 727(a)(11). These requirements shall not apply if the debtor is
8 disabled, as defined in 11 U.S.C. § 109(h)(4). §§ 109(h)(4),
9 727(a)(11). A person is so disabled if he or she is "so
10 physically impaired as to be unable, after reasonable effort, to
11 participate in an in person, telephone, or Internet briefing
12" § 109(h)(4).

13 The debtor in this case is incarcerated at the Sierra
14 Conservation Center, and is unable to use the Internet or to make
15 telephone calls longer than 15 minutes. The debtor may only make
16 telephone calls that are collect calls. In an effort to comply
17 with the credit counseling requirement, the debtor obtained a
18 list of approved providers, and attempted to contact the 15
19 credit counseling agencies on the list, but none would accept his
20 collect call.

21 The court concludes from this evidence that the debtor,
22 after reasonable effort, is unable to participate in credit
23 counseling or a personal financial management course either in
24 person, by telephone, or by way of an Internet briefing. Thus,
25 the debtor is disabled, within the meaning of § 109(h)(4), and
26 will be excused from the requirements of participating in credit
27 counseling and the personal financial management course.

28 / / /

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The court will enter an appropriate order.

Dated: June 16, 2008

/s/

ROBERT S. BARDWIL
United States Bankruptcy Judge