

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 06-10275-JMD  
Chapter 7Jo-Ann A. Raymond,  
Debtor

**MEMORANDUM OPINION AND ORDER**

**I. INTRODUCTION**

The Court has before it a Certification of Exigent Circumstances (Doc. No. 11) (the “Certification”) filed by Jo-Ann A. Raymond (the “Filer”). The Certification describes the Filer’s dire financial circumstances, her lack of readily available transportation, and her lack of understanding of bankruptcy laws. The Filer filed a voluntary petition under chapter 7 of the Bankruptcy Code on March 29, 2006. The Filer is not represented by legal counsel in this proceeding. The Filer previously filed an application (Doc. No. 2) (the “Application”) to have all filing fees waived pursuant to the provisions of 28 U.S.C. § 1930(f), added to the Bankruptcy Code as of October 17, 2006, by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8 (“BAPCPA”). The Court approved the Application by an order dated March 30, 2006 (Doc. No. 4).

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

## II. DISCUSSION

Pursuant to 11 U.S.C. § 109(h), an individual cannot be a debtor “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 . . . 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.” The Court may grant an exemption from the requirement that the debtor receive credit counseling prior to filing her bankruptcy petition and may grant an extension of up to 45 days from the date the bankruptcy petition was filed for satisfying the requirement that a debtor receive credit counseling, if the debtor submits a certification that:

- (i) describes exigent circumstances that merit a waiver of the requirements . . . ;
- (ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services . . . during the 5-day period beginning on the date on which the debtor made that request; and
- (iii) is satisfactory to the court.

11 U.S.C. § 109(h)(3). The requirements in section 109(h)(3) are mandatory. The Court has no discretion to waive the credit counseling certificate requirement or to grant an exemption and extension unless a certification satisfying all three requirements is filed by the debtor. In this case, the Certification does not meet all the requirements set forth in section 109(h)(3) because it does not certify that the Filer requested credit counseling services but was unable to receive them. Therefore, the Filer is not qualified to be a debtor in a bankruptcy proceeding.

It is a mystery to the Court why Congress granted the Court the authority to waive all filing fees for persons such as the Filer, but not waive the credit counseling requirement. The

Filer qualified for a waiver of fees which means the Court and the chapter 7 trustee would have received no payment for the processing of the Filer's bankruptcy case. However, the credit counseling agency would still receive payment for a counseling session.<sup>1</sup> Exactly what form of credit counseling could be useful, or necessary, to a person who qualifies for a waiver of fees under 28 U.S.C. § 1930(f) is even more of a mystery. The rationale for many of the provisions in BAPCPA, the language used in those provisions, and the coordination among them are likely to remain an enigma for a long time. In this case, there is no mystery regarding the action this Court is compelled to take with respect to the Certification.

### III. CONCLUSION

For the reason stated in this opinion, the Filer is not qualified to be a debtor pursuant to 11 U.S.C. § 109(h)(1). Accordingly, this case is hereby DISMISSED.<sup>2</sup> This opinion and order constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

ENTERED at Manchester, New Hampshire.

Date: April 12, 2006

/s/ J. Michael Deasy  
J. Michael Deasy  
Bankruptcy Judge

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<sup>1</sup> The Court is aware that credit counseling agencies are required to provide free credit counseling services to "qualified" persons. However, anecdotal information indicates that such free credit counseling services are difficult and time consuming to obtain, if they are available at all.

<sup>2</sup> The Court, however, notes that nothing precludes the Filer from refiling her case after she has fulfilled the credit counseling requirement set forth in 11 U.S.C. § 109(h).