

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:	§	
	§	
JAMES T. DOYLE and	§	Case No. 07-42806
CARRIE C. DOYLE,	§	(Chapter 7)
	§	
Debtors.	§	

**MEMORANDUM OPINION AND ORDER DENYING DEBTORS' MOTION
FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE**

This matter is before the Court on the request made by James and Carrie Doyle (collectively, the “Debtors”) to waive the requirement in 11 U.S.C. §727(a)(11) that James Doyle complete an instructional course in personal financial management in order to receive a discharge in bankruptcy. This is a core matter within the meaning of 28 U.S.C. §157(b)(2)(A). After considering the pleadings, the record of this case, and the applicable authorities, the Court makes the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052.

RELEVANT FACTS

The Debtors initiated this case by filing a petition for relief under Chapter 7 of Title 11 of the United States Code (the “Bankruptcy Code”) on November 30, 2007. In the instant “Motion to Exempt Debtor from Financial Education Requirement” (the “Motion”), the Debtors state that Mr. Doyle was “incarcerated shortly after the Debtors filed for relief,” there is “no expected release time,” and “[a]s a result, he is unable to complete the Personal Financial Management Class.” The Debtors have not attached a certification to their Motion, and they do not explain how or why Mr. Doyle’s incarceration prevents him from completing a financial management course. The Debtors

simply request an exemption from the requirement that Mr. Doyle complete a personal financial management course in order to receive a discharge as set forth in 11 U.S.C. §§ 109(h)(4) and 727(a)(11).

LEGAL DISCUSSION

Section 727(a) of the Bankruptcy Code provides that a bankruptcy court must grant a discharge to a debtor unless one or more of the specific grounds for denial of a discharge enumerated in paragraphs (1) through (12) is proven to exist. In this case, the relevant exception to the entry of discharge provides as follows:

(a) The court shall grant a debtor a discharge, unless— . . . (11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who is a person described in section 109(h)(4) or who resides in a district for which the United States trustee . . . determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section. . . .

11 U.S.C. § 727(a)(11). The United States trustee has not made a determination that the approved financial management courses are inadequate. Thus, Mr. Doyle may receive a discharge despite his failure to complete a personal financial management course only if he is “a person described in section 109(h)(4) . . .” *Id.*

Under §109(h)(4), as made applicable by §727(a)(11), a debtor may be excused from taking a personal financial management course if the Court determines, after notice and a hearing, that the debtor --

is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and “disability” means that the debtor is so physically impaired as to be

unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

11 U.S.C. § 109(h)(4). *See also* 11 U.S.C. §102(1) (defining the phrase “notice and a hearing”). Here, Mr. Doyle is not serving in a military combat zone, and the Debtors do not allege that Mr. Doyle suffers from some mental illness or mental deficiency. The question, then, is whether Mr. Doyle is “disabled” such that he is “so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing[.]” 11 U.S.C. §109(h)(4).

Court-imposed incarceration is not, of itself, a disability or physical impairment. *See, e.g., Kelbach v. Harris*, 634 F.2d 1304, 1308 (10th Cir. 1980) (discussing the Social Security Act, which defines “disability” for purposes of benefit payments as “inability to engage in any substantial gainful activity by determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months ...”); *In re Moore*, 309 B.R. 725, 727-728 (Bankr. N.D. Tex. 2002) (in ruling that the incarcerated debtor’s father could not appear at the meeting of creditors as his son’s attorney-in-fact, court stated that “[i]ncarceration is not the same as a physical illness or incapacity”). Various courts have held that an incarcerated debtor does not fit the definition for disability or incapacity for the purposes of §109(h)(4) by virtue of his imprisonment. *See, e.g., In re Star*, 341 B.R. 830, 831 (Bankr. E.D. Va. 2006) (discussing pre-petition credit counseling requirement); *In re Rendler*, 368 B.R. 1, 3 (Bankr. D. Minn. 2007) (same); *In re Vollmer*, 361 B.R. 811, 813 (Bankr. E.D. Va. 2007) (discussing pre-petition credit counseling requirement and pre-discharge financial management course requirement). Inasmuch as the required personal financial management course is available by telephone and internet in this district, and a

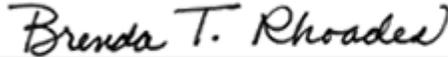
personal appearance at the course is unnecessary, incarceration does not necessarily “disable” or “impair” a debtor from meeting the requirements of §727(a)(11).

Although the Court has determined that it cannot exempt Mr. Doyle from the requirement that he complete a financial management course prior to receiving a discharge, the Debtors are not without recourse. Each debtor’s right to a discharge is analyzed separately in a jointly filed case, *see First Texas Sav. Ass’n v. Reed (In re of Reed)*, 700 F.2d 986, 993 (5th Cir. 1983), and the mere existence of the marital relationship does not determine a spouse’s entitlement to discharge. *See id.* Thus, in this case, Mrs. Doyle’s discharge will be unaffected by Mr. Doyle’s failure to take the course. In addition, when Mr. Doyle is released from prison or otherwise obtains sufficient access to a telephone or the internet, he may be able to take the financial management course, reopen his bankruptcy case, and file the necessary certificate of completion. *See* FED. R. BANKR. P. 1007(c) and 9006(b).

For the foregoing reasons, it is

ORDERED that the Debtors’ Motion, which requests that Mr. Doyle be excused from the requirement in 11 U.S.C. §727(a)(11) that he complete a personal financial management course, shall be, and it is hereby, **DENIED**.

Signed on 5/1/2008

 MD
HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE