

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

IN RE:	§	
	§	
CHARLES NORMAN, SR.,	§	Case No. 07-42593
	§	(Chapter 13)
Debtor.	§	

**ORDER GRANTING REQUEST TO WAIVE
CREDIT COUNSELING REQUIREMENT**

This matter is before the Court on the request made by Charles Norman, Sr., (the “Debtor”) to waive the requirement in paragraph (1) of 11 U.S.C. §109(h) that he obtain budget and credit counseling prior to filing for bankruptcy. The Debtor attached a certification to his bankruptcy petition requesting a waiver, and he filed a separate “Motion for Temporary Waiver of Credit Counseling” (the “Motion”).¹ In the certification and the Motion, the Debtor requests a temporary waiver of the credit counseling requirement pursuant to §109(h)(3).

FACTS

The Debtor owns eight acres in Sherman, Texas, on which his home and business are located. This property was scheduled for a foreclosure sale on Tuesday, November 6, 2007, due to unpaid property taxes. The Debtor’s daughter applied for and obtained approval for a loan to pay off the taxes, but closing could not occur prior to the scheduled sale. The Debtor, therefore, filed a bankruptcy petition on November 5, 2007, in order to prevent the foreclosure sale from going forward.

More than five days prior to filing his bankruptcy petition, the Debtor contacted several credit counseling agencies, including the Institute for Financial Literacy, to obtain

¹ The Debtor attached an unsworn declaration to the Motion declaring, under penalty of perjury, that the statements in the Motion were true and correct. See U.S.C. 28 U.S.C. §1746.

the credit counseling required by §109(h)(1) of the Bankruptcy Code. The Debtor, however, is presently incarcerated by the Texas Department of Corrections. On Wednesday, October 31, 2007, he was unexpectedly transferred from a facility in Grayson County to the Joe F. Gurney Unit near Palestine, Texas. The Debtor contacted the Joe F. Gurney Unit on Thursday, November 1, 2007, about obtaining access to a telephone or computer to complete his credit counseling, but was informed that he would be “in processing” for several days and would not have access to a telephone or computer until after that time.

ANALYSIS

Congress has made credit counseling a requirement for filing a petition in bankruptcy. *See In re Salazar*, 339 B.R. 622, 630 (Bankr. S.D. Tex. 2006) (discussing legislative history of 11 U.S.C. §109(h)). The Court may not temporarily waive the pre-petition credit counseling requirement only if the debtor

submits to the court a certification that – (i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1); (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 referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made the request; and (iii) is satisfactory to the Court.

11 U.S.C. §109(h)(3)(A). If the Court grants a debtor’s request for a waiver, the debtor has 30 days from the petition date to complete the required credit counseling, except that the Court, for cause, may grant the debtor an additional 15 days.

Here, the Debtor submitted a sworn certification to this Court as required by §109(h)(3)(A). The Debtor states in his certification and the accompanying Motion that he sought credit counseling more than five days prior to filing for bankruptcy but was

unable to obtain it as required by §109(h)(3)(A)(ii). Thus, the issues for the Court to decide are whether the Debtor has described exigent circumstances and whether the Debtor's certification is satisfactory to the Court.

The Bankruptcy Code does not define exigent circumstances, and courts have not agreed upon an interpretation. With respect to incarcerated debtors, this Court agrees with other courts which have held that incarceration does not, by itself, impair a debtor from meeting the requirements of §109(h)(1) inasmuch as a personal appearance at the credit counseling session is unnecessary due to the availability of such counseling by telephone and internet. *See, e.g., Kelbach v. Harris*, 634 F.2d 1304, 1308 (10th Cir. 1980); *In re Moore*, 309 B.R. 725, 727-728 (Bankr. N.D. Tex. 2002). In this case, however, the Debtor was temporarily deprived of access to the telephone and internet by the bureaucracy of the Texas Department of Corrections. The Court finds that, under the circumstances, the Debtor's circumstances were sufficiently exigent under §109(h)(1)(A)(i) and that the Debtor's certification meets all of the requirements of §109(h)(3)(A). *See also, e.g., In re Star*, 341 B.R. 830 (Bankr. E.D. Va. 2006) (deferring credit counseling requirement for incarcerated debtor who did not have access to internet or conventional phone usage). For the foregoing reasons, it is

ORDERED that the Debtor's Motion, which requests a temporary waiver of the pre-petition credit counseling required by 11 U.S.C. §109(h)(1), shall be, and it is hereby, **GRANTED** and that the Debtor shall complete such counseling within 45 days after the filing of his petition, but no later than December 15, 2007.

Signed on 11/16/2007

 SR

HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE