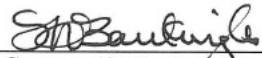




SO ORDERED.

SIGNED this 15th day of November, 2018

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.**


Suzanne H. Bauknicht
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

BILINDA MORGAN GREGORY
aka BILINDA JAY BLANCHE MORGAN
aka BILINDA ARMSTRONG GREGORY
dba MATECHECKS
aka BILINDA ARMSTRONG SMITH
dba MATECHECKS.COM
aka BILINDA JAY GREGORY

Case No. 3:18-bk-32812-SHB
Chapter 7

Debtor

MEMORANDUM AND ORDER

This matter came for hearing on November 15, 2018, on the Court's Order entered October 18, 2018 [Doc. 33], directing Debtor to appear and show cause why this case should not be dismissed due to her ineligibility to be a debtor pursuant to 11 U.S.C. § 109(h) for failing to complete the required pre-petition credit counseling briefing and/or pursuant to 11 U.S.C. § 521(i) for not filing documents required by 11 U.S.C. § 521(a) within 45 days after filing the case. Because Debtor is incarcerated, in lieu of personally appearing, the Court offered her the

opportunity to file a legal brief setting forth any argument. No such brief was filed by the November 14, 2018 deadline.

Debtor, *pro se*, filed the Voluntary Petition commencing this bankruptcy case on September 12, 2018, but did not file a number of the documents required by 11 U.S.C. § 521. Additionally, in response to Question 15 of the Voluntary Petition in this case, Debtor marked that she asked for the credit counseling briefing required by 11 U.S.C. § 109(h)(1) but was unable to obtain those services during the seven days after making the request and that exigent circumstances merit a temporary waiver of the requirement for thirty days; however, she did not check one of the three statutory exceptions. Although Debtor has filed a number of documents in this case, she has not, as of November 15, 2018, filed the Certificate of Credit Counseling; Statement About Social Security Number; Statement Regarding Payment Advices; and Verification of Creditor Matrix.

As the Court advised in its October 18, 2018 Order, incarceration is not one of the three statutory exceptions to the credit counseling requirement provided by 11 U.S.C. § 109(h)(4): “[t]he requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone.” Case law is clear that “incarceration does not amount to incapacity or disability for purposes of [§ 109(h)(1)].” *In re Kerr*, No. 14-34007, 2014 WL 6747112, at *1 (Bankr. N.D. Ohio Nov. 26, 2014); *see also In re Hobbs*, No. 12-50098, 2015 WL 1805989, at *1 (Bankr. S.D. Ga. Apr. 16, 2015). As explained by the Sixth Circuit Bankruptcy Appellate Panel:

As part of the Bankruptcy Abuse and Consumer Protection Act of 2005, Congress amended the Bankruptcy Code to require all individual debtors to complete a pre-petition credit briefing. 11 U.S.C. § 109(h)(1). Pursuant to § 109 of the Bankruptcy Code, if the briefing is not completed, the debtor is not eligible for bankruptcy relief and the bankruptcy court may dismiss the case. *In re Ingram*, 460 B.R. 904, 910 (6th Cir. BAP 2011).

The exceptions to this requirement are narrowly tailored. The requirement does not apply to a debtor who “the court determines, after notice and a hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone.” 11 U.S.C. § 109(h)(4). 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. . . .” *Id.* 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).” *Id.*

. . . .

Finally, Ramey raises policy arguments relating to the credit briefing requirement. These arguments appear to include whether incapacity and disability are reasonably defined, whether waivers should generally be more available and easier to obtain, and whether the credit briefing is of any help to debtors. Ramey is not the first, and likely not the last, to raise arguments of this nature. However, such policy arguments are for Congress to address, not the courts. The bankruptcy court can only apply the statute as it is plainly written. *Hildebrand v. Petro (In re Petro)*, 395 B.R. 369, 374 (6th Cir. BAP 2008) (citing *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*), 530 U.S. 1, 6, 120 S. Ct. 1942, 1947, 147 L.Ed.2d 1 (2000)). That law was correctly applied in this instance.

In re Ramey, 558 B.R. 160, 163–64 (B.A.P. 6th Cir. 2016). “Although the court is sympathetic to debtor’s situation, [her] incarceration is not within the meaning of “disability” intended by Congress when they drafted § 109(h)(4), and therefore debtor does not meet the exception for permanent waiver” *In re Kerr*, 2014 WL 6747112, at *1 (quoting *In re Star*, 341 B.R. 830, 831 (Bankr. E.D. Va. 2006)); see also *In re Price*, No. 13-10157, 2013 WL 1655678, at *1 (Bankr. M.D. La. Apr. 12, 2013) (“[I]ncarceration alone is not an exigent circumstance justifying a temporary waiver under § 109(h)(3)(A)(i).”).

Similarly, “11 U.S.C. § 109(h)(1) allows a temporary waiver of the credit counseling requirements under ‘exigent circumstances, [however,] the Debtor in this case has not described circumstances that are ‘exigent,’ therefore the statute does not apply. It is true that Debtor has alleged that [she] is incarcerated. But, courts have held that mere incarceration is not a sufficient basis to waive the credit counseling requirements of the Bankruptcy Code.” *In re Baghoumian*, No. 14-70671-JAD, 2014 WL 5454233, at *1 (Bankr. W.D. Pa. Oct. 24, 2014) (stating that while inmates may have limited access to phone privileges, any such privilege offers the opportunity to obtain the required credit counseling briefing) (citing *In re Hubel*, 395 B.R. 823 (N.D.N.Y. 2008); *In re Garivay*, Slip. Op. Case No. 06-40851 (June 15, 2006, Bankr. E.D. Tex. 2006)).

Because Debtor did not obtain the required credit counseling briefing within the 180 days preceding the date of the filing of her petition as required by 11 U.S.C. § 109(h)(1) and did not prove that exigent circumstances merit a waiver of the requirement, the Court finds that Debtor is not eligible to be a debtor under Title 11, and directs that this bankruptcy case is DISMISSED.

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