



SO ORDERED.

SIGNED this 14th day of December, 2023

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


Suzanne H. Bauknight
UNITED STATES BANKRUPTCY JUDGE

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

In re

TRACY NICOLE TAYLOR

Case No. 3:23-bk-31871-SHB
Chapter 13

Debtor

MEMORANDUM AND ORDER

The Court held a hearing on December 13, 2023, pursuant to two Orders. The first, entered November 15, 2023 (“November 15 Order”) [Doc. 28], directed Debtor to appear and show cause why this case should not be dismissed because (1) she failed to file a certificate of credit counseling; (2) she failed to file documents in this case as required by 11 U.S.C. § 521(a); and (3) her prior bankruptcy case (Case No. 3:23-bk-31624-SHB) was dismissed in the preceding 180 days before she filed the petition in this case because Debtor failed to abide by orders of the Court and failed to appear before the Court in proper prosecution of that case. The November 15 Order also directed Debtor to show cause why the Court, as authorized by 11 U.S.C. § 349(a), incorporating therein 11 U.S.C. § 109(g), should not impose a 270-day bar against the filing of a bankruptcy case by Debtor under any chapter of Title 11 for her repeated and willful failure to

abide by orders of the bankruptcy court or otherwise comply with the provisions of the Bankruptcy Code in this and her prior case. The second Order, entered December 7, 2023 (“December 7 Order”)¹ [Doc. 34], extended the 45-day deadline to file documents required by 11 U.S.C. § 521(a)(1) to the close of business on December 13, 2023, and directed Debtor to “either file before the December 13, 2023 hearing or bring with her to the hearing the Certification of Credit Counseling establishing that she took the pre-petition credit counseling briefing required by 11 U.S.C. § 109(h).” The December 7 Order also expressly stated that “Debtor’s failure to appear at the hearing on December 13, 2023, and/or to comply with the directives and deadlines established by this Order will result in dismissal of her case with a 270-day bar from refiling.” [Doc. 34 at ¶ 5.] Debtor was served with both orders via electronic notice as authorized by Debtor through her Debtor Electronic Noticing Election (DeBN) filed on October 26, 2023 [Doc. 5], and by United States Mail, first class, postage prepaid to Post Office Box 1146, Seymour, Tennessee 37865, the address provided by Debtor in her Voluntary Petition filed on October 26, 2023 [Doc. 1].

Debtor again contacted the clerk ex parte on the morning of December 13, 2023, to report that she again had COVID-19. Debtor failed to file any response to either the November 15 Order or the December 7 Order; did not appear at the hearing on December 13, 2023; and did not file a Certification of Credit Counseling before the hearing as directed by the December 7 Order. At the hearing, the Chapter 13 Trustee advised the Court that Debtor appeared at the meeting of creditors on December 7, 2023, and that she testified that she had taken the post-petition personal financial management course related to her prior case (the certificate for which, bearing number 14912-TNE-DE-037856978, was filed by Debtor in her prior case on October 19, 2023, the day after that

¹ Per the November 15 Order, the hearing to show cause was originally scheduled for December 6, 2023; however, it was continued by the December 7 Order, which was entered after Debtor contacted the clerk’s office on the afternoon of December 5, 2023, and reported that she had COVID-19.

case was dismissed (*see* No. 3:23-bk-31624, ECF No. 16)). The Chapter 13 Trustee, however, understood from Debtor's testimony that she had not in fact taken any pre-petition credit counseling course as required by 11 U.S.C. § 109(h)(1).

Notably, notwithstanding that Debtor failed to appear at the December 13 hearing or otherwise file the required credit counseling certificate before the hearing as directed by the December 7 Order, she personally appeared in the clerk's office at approximately 12:15 p.m. on December 13 and filed the same Certificate of Debtor Education, bearing number 14912-TE-DE-037856978, that she had filed in her prior case. [Doc. 38.] Also notably, Debtor brought to the clerk's office a purported doctor's note, stating that she had COVID. When the deputy clerk noted that the doctor's note was unsigned, Debtor took it with her and apparently returned sometime between 1:15 and 2:00 p.m. to the clerk's intake desk and left the note, now signed, in an envelope bearing her case number on the counter without ringing the bell to call for a clerk to come to the counter to accept the document for filing.² The deputy clerk discovered the envelope containing the note just after 2:00 p.m.

I. FINDINGS OF FACT

The record reflects the following undisputed facts. Debtor has filed two *pro se* bankruptcy cases within the last 180 days, each with delinquent document filings and noncompliance with orders of this Court. The histories of the cases are summarized as follows:

(A) In Case No. 3:23-bk-31624-SHB, filed on September 14, 2023, Debtor failed
(1) to file the Certification of Credit Counseling; Statement Regarding Payment Advices;
Schedules A/B through J; Declaration About Schedules; Statement of Financial Affairs;
Summary of Assets and Liabilities and Certain Statistical Information; Chapter 13

² Because the note was merely left on the clerk's intake counter without any request for it to be filed, the clerk secured the note but did not file it for appearance on the docket.

Statement of Current Monthly Income and Calculation of Commitment Period; and Chapter 13 Plan as required by 11 U.S.C. §§ 109(h), 521(a)(1), and 1321; Federal Rules of Bankruptcy Procedure 1007(b) and 3015(b); and the Notice of Additional Documents to Be Filed; and (2) to appear at the hearing held on October 18, 2023, as required by the Court's Order entered on September 29, 2023, directing Debtor to appear and show cause why the case should not be dismissed and rescheduling the hearing noticed on the Chapter 13 Trustee's Motion to Dismiss filed on September 19, 2023. As a result of Debtor's failure to appear or to otherwise comply with the Court's September 29, 2023 Order and the Bankruptcy Code, the case was dismissed by an Order entered on October 18, 2023.

(B) In this case, filed October 26, 2023, Debtor did not obtain the pre-petition credit counseling briefing required by 11 U.S.C. § 109(h); did not file the Statement Regarding Payment Advices, Schedules C and J, Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period, and Chapter 13 Plan as required by 11 U.S.C. §§ 521(b)(1) and 1321, Rules 1007(b) and 3015(b), and the Notice of Additional Documents to Be Filed; failed to appear at the December 13 hearing as directed by the December 7 Order; and failed to comply with the remaining directives of the December 7 Order to file documents as directed therein.

The Court expressly finds that Debtor's conduct in these two cases is a willful failure to abide by orders of the Court and a failure to appear before the Court in proper prosecution of the cases under 11 U.S.C. § 109(g)(1).

II. CONCLUSIONS OF LAW

Eligibility to file for bankruptcy relief is conferred through 11 U.S.C. § 109(h), which, *inter alia*, requires individual debtors to receive a credit counseling briefing from an approved nonprofit

budget and credit counseling agency within the 180 days immediately preceding the filing of a bankruptcy petition. Additionally, under 11 U.S.C. § 1325(a)(3) and (7), debtors are required to file and proceed in their cases in good faith, and likewise, to propose their plans in good faith, with an almost identical standard as cases concerning good faith and dismissal under 11 U.S.C. § 1307(c). *In re Hall*, 346 B.R. 420, 426 (Bankr. W.D. Ky. 2006). Whether a debtor has filed in bad faith requires examination of the totality of the circumstances and is based on past and present circumstances. *Laguna Assocs. Ltd. P'ship v. Aetna Cas. & Surety Co. (In re Laguna Assocs. Ltd. P'ship)*, 30 F.3d 734, 738 (6th Cir. 1994); *In re Glenn*, 288 B.R. 516, 519-20 (Bankr. E.D. Tenn. 2002).

In making the good faith determination, courts generally focus on the following factors:

(1) the debtor's income; (2) the debtor's living expenses[;] (3) the debtor's attorney fees; (4) the expected duration of the Chapter 13 plan; (5) the sincerity with which the debtor has petitioned for relief under Chapter 13; (6) the debtor's potential for future earning; (7) any special circumstances the debtor may be subject to, such as unusually high medical expenses; (8) the frequency with which the debtor has sought relief before in bankruptcy; (9) the circumstances under which the debt was incurred; (10) the amount of payment offered by debtor as indicative of the debtor's sincerity to repay the debt; (11) the burden which administration would place on the trustee; and (12) the statutorily-mandated policy that bankruptcy provisions be construed liberally in favor of the debtor.

Soc'y Nat'l Bank v. Barrett (In re Barrett), 964 F.2d 588, 592 (6th Cir. 1992). Other relevant factors include "the accuracy of the plan's statements of the debts, expenses and percentage repayment of unsecured debt[,], and whether any inaccuracies are an attempt to mislead the court[.]" *Hardin v. Caldwell (In re Caldwell)*, 851 F.2d 852, 859 (6th Cir. 1988) (citation omitted).

Courts also look to the following:

the nature of the debt, including the question of whether the debt would be nondischargeable in a Chapter 7 proceeding; the timing of the petition; how the debt arose; the debtor's motive in filing the petition; how the debtor's actions affected creditors; the debtor's treatment of creditors both before and after the

petition was filed; and whether the debtor has been forthcoming with the bankruptcy court and the creditors.

Alt v. United States (In re Alt), 305 F.3d 413, 419 (6th Cir. 2002) (citation omitted). Weighing these factors – “which ‘may circumstantially reflect the debtor’s motivation, and ultimately his “good faith,”’ in seeking relief under chapter 13” – assists courts in determining whether “the debtor’s purpose in filing for chapter 13 relief is consistent with the underlying purpose and spirit of chapter 13 – i.e., financial ‘rehabilitation through repayment of debt’ – [and if] the filing is likely in good faith.” *Condon v. Brady (In re Condon)*, 358 B.R. 317, 326 (B.A.P. 6th Cir. 2007) (internal citations omitted).

Although courts must find that imposition of a sanction “be commensurate with the egregiousness of the conduct,” the purpose of adding § 109(g) was to address abuse of the system including “the filing of meritless petitions in rapid succession to improperly obtain the benefit of the Bankruptcy Code’s automatic stay provisions as a means of avoiding foreclosure under a mortgage or other security interest.” *In re Cline*, 474 B.R. 789 (Table), No. 11-8075, 2012 WL 1957935, at *7 (B.A.P. 6th Cir. June 1, 2012) (citations omitted). “While multiple filings are not, in and of themselves, improper or indicative of bad faith, a history of multiple filings and dismissals may be construed as bad faith.” *Cusano v. Klein (In re Cusano)*, 431 B.R. 726, 735 (B.A.P. 6th Cir. 2010) (citing *In re Glenn*, 288 B.R. 516, 520 (Bankr. E.D. Tenn. 2002)). Further, if there is sufficient cause, courts have the authority under 11 U.S.C. §§ 105(a) and 349(a) to sanction abusive debtors with a prohibition against filing for more than the 180 days set forth in 11 U.S.C. § 109(g)(1). *Id.* at 737.

Debtor filed two *pro se* Chapter 13 bankruptcy petitions within a 42-day period; however, in neither case did she obtain the required pre-petition credit counseling briefing or file the required statements and schedules. nor did she appear before the Court in response to its orders. The Court

provided Debtor with ample notice that her failure to comply with the November 15 and December 7 Orders would result in dismissal of this case and imposition of a 270-day bar on refiling. A totality of the circumstances evidences that Debtor, who has repeatedly and willfully failed to comply with orders of this Court and the Bankruptcy Code, did not file this case in good faith.

For the foregoing reasons, constituting the Court's findings of fact and conclusions of law as required by Rule 52 of the Federal Rules of Civil Procedure, applicable to contested matters by virtue of Rule 9014 of the Federal Rules of Bankruptcy Procedure, the Court directs the following:

1. Because Debtor did not obtain a 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), she is not eligible to be a debtor under title 11, and this Chapter 13 bankruptcy case is DISMISSED.

2. Because she has repeatedly and willfully failed to abide by orders of the Court as outlined herein and failed to appear before the Court as directed, Tracy Nicole Taylor is BARRED from filing another bankruptcy petition under any chapter of Title 11 of the United States Code for a period of 270 days from the date of entry of this Order. *See* 11 U.S.C. § 109(g)(1).

3. In addition to the electronic notice Debtor will receive as authorized by the DeBN filed on October 26, 2023 [Doc. 5], the clerk shall mail a copy of this Order to Tracy Nicole Taylor, Post Office Box 1146, Seymour, Tennessee 37865.

###