

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

In re:)	Bankr. No. 20-40167
)	Chapter 7
JODI MARIE STEVENSON)	
SSN/ITIN xxx-xx-1296)	DECISION RE:
)	DEBTOR'S ELIGIBILITY
Debtor.)	

The matter before the Court is Debtor's eligibility to be a chapter 7 debtor and, in particular, Debtor's compliance with 11 U.S.C. § 109(h)(1), as set forth in the Order to Show Cause in Lieu of Dismissal of Case. This is a core proceeding under 28 U.S.C. § 157(b)(2). The Court enters these findings and conclusions pursuant to Fed.Rs.Bankr.P. 7052 and 9014(c). For the reasons discussed below, the Court must dismiss the case.

I.

No material facts are in dispute. Debtor Jodi Marie Stevenson filed a chapter 7 petition on May 9, 2020. That day, she also filed a Certificate of Counseling (doc. 3). According to the certificate, Debtor completed the credit counseling required by 11 U.S.C. § 109(h) on November 11, 2019. The number of days between May 9, 2020 and November 11, 2019, counting back from and including May 9, 2020, is 181.

The Court entered an Order to Show Cause in Lieu of Dismissal of Case (doc. 8) and directed Debtor to show cause why her case should not be dismissed for her failure to comply with § 109(h)(1). Debtor responded (doc. 12) and argued the 180-day period should be counted from the date of her credit counseling course forward.

II.

Unless one of the limited exceptions applies, *see* 11 U.S.C. § 109(h)(4), an individual must, to be a debtor in bankruptcy, complete "an individual or group briefing . . . that outline[s] the opportunities for available credit counseling and assist[s] such individual in performing a related budget analysis." 11 U.S.C. § 109(h)(1). Unless a limited exception applies, *see* 11 U.S.C. § 109(h)(3), the debtor must receive the course "during the 180-day period ending on the date of filing of the petition by such individual[.]" *Id.*¹

III.

As this Court previously held, "[t]he event that triggers the 180-day period is the filing of a petition for relief, not the completion of credit counseling, and the Court must count backward from the petition date, not forward from the date credit counseling is received." *In re Meng*, Bankr. No. 10-40116, 2010 WL 1329397 (Bankr. D.S.D. Mar. 30, 2010). Following the amendment of § 109(h)(1) in 2010, the petition date is included in the 180 days. *In re Smith*, Bankr. No. 12-12163-M, 2012 WL 5076282, at *2 (Bankr. N.D. Okla. Oct. 11, 2012) (discussing amendment of § 109(h)(1) in 2010 and holding "the credit counseling requirement runs backwards from the date of filing the petition"). Thus, to compute the relevant 180-day period, the petition date is day "180" and each day, including intermediate Saturdays, Sundays, and any legal holidays, Fed.R.Bankr.P. 9006(a)(1)(B), is included to count

¹ This code section was amended in late 2010. It previously provided the debtor must receive the credit counseling "during the 180-day period preceding the date of filing of the petition by such individual[.]"

back to reach day "1" and establish the parameters of the 180-day period.²

In this case, Debtor's petition was filed on May 9, 2020. As noted above, the 180-day period, counting back from and including May 9, 2020, commenced November 12, 2019. Because Debtor took her credit counseling course on November 11, 2019, she received the course outside the 180-day window beginning on November 12, 2019 and ending when she filed her petition on May 9, 2020. Thus, pursuant to 11 U.S.C. § 109(h), Debtor is not eligible to be a debtor in bankruptcy, and her case must be dismissed. *In re Urbanec*, Bankr. No. 14-81751, 2014 WL 5449651, at *2 (Bankr. D. Neb. Oct. 24, 2014) (the clear and unambiguous language of § 109(h) does not afford the court any authority to waive or overlook noncompliance).

An appropriate order will be entered.

Dated: May 20, 2020.

² The Court leaves for another day the question of how to apply Fed.R.Bankr.P. 9006(a)(1)(C) and (a)(5) where day "1" falls on a weekend or a legal holiday.

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)	Chapter 7
JODI MARIE STEVENSON)	
SSN/ITIN xxx-xx-1296)	ORDER DISMISSING CASE
)	
Debtor.)	

In recognition of and compliance with the decision entered this day; and for cause shown; now, therefore,

IT IS HEREBY ORDERED this case is dismissed. Said dismissal is without prejudice to Debtor's receiving credit counseling again and timely filing a new petition.

So ordered: May 20, 2020.

BY THE COURT:



Charles L. Nail, Jr.
Bankruptcy Judge

NOTICE OF ENTRY
Under Fed.R.Bankr.P. 9022(a)

This order/judgment was entered
on the date shown above.

Frederick M. Entwistle
Clerk, U.S. Bankruptcy Court
District of South Dakota