



IT IS ORDERED as set forth below:

Date: March 11, 2009

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

|| CASE NO. 08-82704

Sean Eric Goodwin,

CHAPTER 7

Debtor.

JUDGE MASSEY

||

**ORDER DENYING MOTION FOR WAIVER OF REQUIREMENT
TO COMPLETE FINANCIAL MANAGEMENT COURSE**

Section 727(a)(11) of the Bankruptcy Code bars a discharge to a debtor who fails “to complete an instructional course concerning personal financial management . . . [unless the debtor] “is a person described in section 109(h)(4).” 11 U.S.C. § 727(a)(11). A person described in section 109(h)(4) is an individual who is “unable to complete [the requirements of subsection 109(h)(1) to obtain a prepetition briefing on opportunities for credit counseling] because of incapacity, disability, or active military duty in a military combat zone.”

Debtor Sean Eric Goodwin suffered no disability on October 31, 2008, when he obtained a briefing on opportunities for credit counseling, thereby meeting the requirements of section

109(a)(1) when he filed this Chapter 7 case four days later, on November 4, 2008. Mr. Goodwin moves for an order waiving the requirement that he complete a course on financial management because he says he now has a “disability” within the meaning of section 109(h)(4) that prevents him from satisfying section 727(a)(11).

Mr. Goodwin’s alleged “disability” is based on the fact that he is in prison and has no means to complete a financial management course approved by the U.S. Trustee. See 11 U.S.C. § 111(b). The motion supplies no details of his transgressions, and the details are not material to the legal issue presented.¹

In support of his motion, Mr. Goodwin cites *In re Gates*, 2007 Bankr. LEXIS, 2007 WL 4365474 (December 11, 2007), in which the bankruptcy court decided that an imprisoned debtor has a disability within the meaning of section 109(h)(4) and therefore entitled to a waiver under section 727(a)(11). The *Gates* court reasoned as follows: “Debtor effectively has no way to comply with Section 727(a)(11). For this reason, the court finds that he is disabled within the meaning of that term as used in 11 U.S.C. § 109(h)(4).” *Id.* That court thus equated disability with inability to participate in a briefing, without any analysis to justify such a construction of the statute. For that reason, it is wholly unpersuasive.

¹According to document nos. 412 and 423 in *U.S.A. v. Goodwin, et al.*, Cr. Action File No. 1:07-cr-00245-1 (U.S. District Court, N.D.Ga.), Mr. Goodwin participated in a scheme to defraud banks, resulting in a felony conviction and a sentence to serve 61 months in prison and to make restitution of \$938,125.57, suggesting that perhaps a financial management course would be beneficial to the extent that good financial management depends on not stealing other people’s money. Luckily for him, the judgment so mandates: “The defendant shall participate in the Bureau of Prisons Financial Responsibility Program while incarcerated.” (Document no. 412, p.5.) Maybe the U.S. Trustee would certify that program.

In section 109(h)(4), “‘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).” (Emphasis added.) Mr. Goodwin has not alleged that he is unable to participate in a course on financial management because he has a physical impairment. He is unable to participate because he is physically restrained. Being locked up may prevent Mr. Goodwin from being able to take an approved financial management course, but that inability is not caused by a physical impairment within the plain meaning of section 109(h)(4). *In re Johnson*, 2007 WL 2990563, 1-2 (Bankr. D.Dist.Col. 2007) (“That a debtor is denied freedom to participate in person, utilize the Internet, or employ a telephone does not amount to a ‘physical impairment.’”). If the word “disability” meant inability to show up, it would have been unnecessary to add an exception for a person on “active military duty in a military combat zone” because those words would merely describe a specific example of a situation manifesting the inability of a debtor to participate in a briefing or course and would therefore be redundant.

In other words, “disability” refers to a medical condition and not to a law of physics that prevents Mr. Goodwin from walking through walls and iron bars. *In re Bristol*, 2009 WL 238002, 3 (Bankr. E.D.N.Y. 2009) (“[T]he ordinary, common meaning of the term ‘physical impairment’ refers to an impairment caused by a physical condition or characteristic inherent to the person, rather than some impairment caused by external conditions unrelated to the person's physical health or makeup.”); *In re Larsen*, 2009 WL 77868, 2 (Bankr. E.D.Wis. 2009) (“Finally, even though incarceration may erect physical barriers to the debtor's finding an available telephone or computer to obtain the briefing, it is not a physical impairment in the sense that it is

not an injury, defect, or characteristic of this person's physical makeup that prevents him from doing what is necessary to obtain the briefing.”)

Almost all courts that have considered this issue have held that an individual is not “disabled” within the meaning of section 109(h)(4) merely because that individual is incarcerated. *In re Anderson*, 397 B.R. 363, 366-367 (6th Cir. BAP 2008) (citing *In re Star*, 341 B.R. 830, 831 (Bankr.E.D.Va.2006); *In re Hubel*, 395 B.R. 823, 826 (N.D.N.Y.2008); *In re Rendler*, 368 B.R. 1, 4 (Bankr.D.Minn.2007); *In re Ruckdaschel*, 364 B.R. 724, 729 (Bankr.D.Idaho 2007); *In re McBride*, 354 B.R. 95, 99 (Bankr.D.S.C.2006); *In re Bindus*, 2008 WL 2902567, *2 (Bankr.N.D.Ohio July 8, 2008); and *In re Cox*, 2007 WL 4355254, *2 (Bankr.M.D.Ga. Nov. 29, 2007)).

Because Debtor is not disabled with the meaning of section 109(h)(4), his motion to waive the requirement of completing a course on financial management is DENIED. The Clerk is directed to serve a copy of this Order on Debtor, Debtor’s attorney, the Chapter7 Trustee and the U.S. Trustee.

END OF ORDER