

**U.S. BANKRUPTCY COURT
District of South Carolina**

Case Number: **14-01536-hb**

Supplemental Order

The relief set forth on the following pages, for a total of 3 pages including this page, is hereby ORDERED.

**FILED BY THE COURT
03/20/2014**



Entered: 03/21/2014

A handwritten signature in black ink, appearing to read "Adam L. Curcio". The signature is written in a cursive style and is positioned above a horizontal line.

US Bankruptcy Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

Alfreda Elise McDowell,

Debtor(s).

C/A No. 14-01536-HB

Chapter 7

ORDER

THIS MATTER came before the Court pursuant to an Application to Proceed *in forma pauperis* filed by Alfreda Elise McDowell (“Debtor”). The Court previously entered an order denying Debtor’s request and ordering that the fee be paid in full within ten days from entry of the order.¹ This Order serves to supplement the prior order of the Court.

Pursuant to 28 U.S.C. § 1930(f) the Court *may* waive the filing fee for Debtor upon proper application “if the court determines that such individual has income less than 150 percent of the income official poverty line as defined by the Office of Management and Budget . . . applicable to a family of the size involved and is unable to pay the fee in installments.” Under the Interim Procedures set forth by the Judicial Conference of the United States, the debtor has the burden of showing that an application to waive the filing fee should be granted.² The court should consider the totality of the circumstances in determining whether a debtor is unable to pay the filing fee.³

Debtor’s schedules indicate that she earns a monthly net income of \$2,749.00 compared to the poverty guidelines listing \$3,488.75 as 150% of the income official poverty line for a family of five. While Debtor’s income appears to be below the guidelines, the Court must also

¹ Doc. No. 13, entered March 19, 2014.

² See Judicial Conference of the United States Interim Procedures Regarding the Chapter 7 Fee Waiver Provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, *available at* <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/JCUSinterimProcedures.aspx>

³ *Id.*

examine whether Debtor can afford to pay and any other sources of funds Debtor may have or receive that enable her to pay the \$306.00 Chapter 7 filing fee.

Debtor's schedules indicate that she will be receiving a tax refund but the amount is currently unknown. Additionally, at filing Debtor's bank accounts held in excess of \$900.00 and she was able to pay an attorney \$1200.00.⁴ The Court focused, however, on Debtor's schedules and Statements indicating that Debtor purchased a 2013 Dodge Charger shortly before filing. Debtor lists the value of the vehicle at \$28,116.00 and a total debt owed for this vehicle of \$46,930.00. It is co-owned with another individual and that person is also a co-debtor on the debt. Debtor's schedule of expenses indicates she makes a \$626.00 car payment for the Dodge Charger each month. The Statement of Financial Affairs indicates a down payment on the vehicle of \$3,000.00 in February of 2014. Debtor's Statement of Intention explains Debtor intends to retain the vehicle and continue making these high payments. Excluding the \$626.00 monthly vehicle payment, Debtor would have a \$280.00 budget surplus each month.

Given that Debtor could afford the \$3,000.00 down payment shortly before filing, the attorneys' fees paid and considering she had the ability to make and plans to continue to pay this large car payment, it appears that she could also pay the small filing fee of \$306.00. For these reasons, the court reaffirms the decision to deny the request to waive the filing fee.

AND IT IS SO ORDERED.

⁴ The Court notes that "[a] debtor is not disqualified for a waiver of the filing fee *solely* because the debtor has paid (or promised to pay) a bankruptcy attorney, bankruptcy petition preparer, or debt relief agency in connection with the filing." *Id.* (emphasis added). However, the Court is not prohibited from considering such a payment as one factor. *See In re Davis*, 372 B.R. 282 (Bankr. W.D. Va. 2007).