UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

In Re:	)	
	)	**JUDGE RICHARD L. SPEER**
Cathy Jo Schreima	)	
	)	Case No. 00-3319
Debtor(s)	)	
	)	(Related Case: 00-35051)
Cathy Jo Schreima	)	
	)	
Plaintiff(s)	)	
	)	
v.	)	
	)	
U.S. Dept. of Education	)	
	)	
Defendant(s)	)	

DECISION AND ORDER

This cause comes before the Court after a Trial on the Plaintiff's Complaint to determine the dischargeability of a student loan debt. At the Trial, the Plaintiff stipulated to the facts as set forth in the Defendant's Trial Brief; these facts, as supplemented by the evidence presented at the Trial, are as follows:

In 1987, after receiving a divorce from her second husband, the Plaintiff, at the age of 34, began to attend Wright State University. To finance her higher education, the Plaintiff took out various student loans which were guaranteed by the Defendant, the United States Department of Education. In 1991, the Plaintiff received a bachelor's degree in mass communications from Wright State University. After receiving her degree, the Plaintiff initially worked at a variety of jobs – all of

which were relatively low paying – until receiving a permanent position in 1994 at a local newspaper, The Evening Leader.

Since beginning her job at The Evening Leader, the Plaintiff's average gross annual income has gone from Twelve Thousand Nine Hundred Forty-nine dollars ($12,949.00) in 1994 to Nineteen Thousand Seven Hundred Fifty-eight dollars ($19,758.00) in 1999. Presently, the Plaintiff earns just over Nine dollars per hour which amounts to approximately One Thousand dollars ($1000.00) per month in take home pay. In addition, with regards to the Plaintiff's income, the evidence produced at Trial shows that the Plaintiff occasionally receives some overtime hours[1] and has in past years received a year-end bonus of approximately Five Hundred dollars ($500.00). As for the stability of this income, the Plaintiff testified that although her industry has gone through some job cuts, it is likely that her position, as a newspaper editor, is secure. In addition, the Plaintiff acknowledged that in the future she would, in all likelihood, receive further periodic pay increases and year-end bonuses.

In terms of her expenses, the facts presented in this case show that the Plaintiff is very frugal with her money. The facts of this case, however, also show that, because of certain medical difficulties, the Plaintiff's monthly take-home pay, excluding any year-end bonus, is close to or insufficient to cover her monthly expenses. According to the Plaintiff, any shortfall in her income is made up by friends or family members.

The primary medical condition which has caused the Plaintiff financial difficulties is Myasthenia Gravis disease, or MG for short. Although no actual medical evidence was presented as to the nature of this disease, the Plaintiff related to the Court that MG is a neuromuscular disease which causes weakness and fatigue in mainly the face, eyes, throat and limbs. In addition, the Plaintiff

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[1] The Plaintiff testified, however, that when she works overtime hours she only receives half-time pay, instead of the standard time and a half pay.

testified that as a result of this disease, her immune system is suppressed which makes her very susceptible to contagious diseases. In addition to having MG, it was also brought to the Court's attention that the Plaintiff suffers from a few additional medical problems; specifically, (1) sleep apnea, a sleep disorder that cause an individual's airways to close while the person is asleep, (2) carpal tunnel syndrome, (3) and degenerative knee disorder which may necessitate surgery in the future.

With respect to the student loan debts at issue, the facts of this case show that the Plaintiff incurred the obligations in four installments: $841.00 on 4/20/89; $2,204.00 on 7/8/89; $2,376.00 on 4/4/90; and $2,678.00 on 9/2/90. Since incurring these obligations, however, the Plaintiff has not made one voluntary payment thereon; therefore, as a result of accruing interest and other charges, the Plaintiff, at the time of the Trial held in the matter, owed a total of Thirteen Thousand Nine Hundred Fifty-three and 63/100 dollars ($13,953.63) on her student loan obligations. On the matter of the Plaintiff's nonpayment of her student loan obligations, these additional facts were brought to the Court's attention: (1) while the Plaintiff's student loan obligations were in a repayment status, the Plaintiff had very little contact with the Defendant regarding her inability to meet the obligations; (2) in an effort to partially alleviate the burden imposed on the Plaintiff by the student loan obligations, the Defendant offered to cut her loan obligations by one-fourth provided that she would pay $75-100 dollars per month; (3) to collect on the Plaintiff's student loan obligations, the Defendant had commenced garnishment proceedings and had also intercepted past tax refunds due to the Plaintiff; (4) since filing for bankruptcy, which occurred on November 28, 2000, the Defendant has ceased garnishing the Plaintiff's wages, thus freeing up additional funds for the Plaintiff's benefit.

When asked to explain why no voluntary payments had been made on her student loan obligations, the Plaintiff stated that her son, who has since graduated from high school and left home, had impeded her ability to pay her student loan obligations. As for her ability to earn extra money to pay the student loan obligations, the Plaintiff testified that such a possibility is hampered by the nature of her job which requires that she work irregular hours. Further, the Plaintiff contends that her ability

to find another higher paying job is severely limited by her medical difficulties; in particular, the Plaintiff testified that her present employer is very accommodating with her medical needs, which on past occasions have caused her to miss quite a lot of work. Along this same line, the Plaintiff pointed out that her present employer provides her with much needed medical insurance.

LEGAL ANALYSIS

Under 28 U.S.C. § 157(b)(2)(I), a determination as to the dischargeability of a particular debt is a core proceeding. Thus, this matter is a core proceeding.

In the instant case, the Plaintiff seeks a determination that her student loan obligations are subject to this Court's Order of Discharge. Section 523(a)(8) of the Bankruptcy Code governs the Plaintiff's request and provides that:

> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt–
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> > (8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents[.]

Thus, under § 523(a)(8), those obligations incurred to finance a debtor's higher education are, unlike most debts in bankruptcy, not subject to a bankruptcy court's order of discharge, unless the debtor can establish that excepting the debt from discharge would impose an undue hardship upon the debtor and the debtor's dependents.

To ascertain the existence of undue hardship in a particular case, this Court, along with the Bankruptcy Appellate Panel for the Sixth Circuit and the Sixth Circuit Court of Appeals, has applied what has become to be known as the Brunner Test.[2] *See Miller v. U.S. Dep't of Education (In re Miller)*, 254 B.R. 200, 202 (Bankr. N.D.Ohio 2000); *Dolph v. Pennsylvania Higher Educ. Assistance Agency (In re Dolph)*, 215 B.R. 832, 834 (B.A.P. 6th Cir. 1998); *Tennessee Student Assistance Corp. v. Hornsby (In re Hornsby)*, 144 F.3d 433 (6th Cir. 1998). Under this test, a finding of undue hardship requires that a debtor establish the following three requirements by a preponderance of the evidence:

> (1) the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for himself and his dependents if forced to repay the loans;
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> (2) additional circumstances exist indicating that his state of affairs is likely to persist for a significant portion of the repayment period; and
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> (3) the debtor has made good faith efforts to repay the loans.

Brunner v. New York State Higher Educ. Serv. Corp., 831 F.2d 395, 396 (2nd Cir.1987); *PHEAA v. Faish (In re Faish)*, 72 F.3d 298, 300 (3rd Cir. 1995). After considering these requirements as they relate to the particular facts of this case, it is the position of this Court that the Plaintiff has not met her requisite burden; specifically, the Plaintiff has failed to establish, as is required under the third prong of the Brunner Test, that she made a good faith effort to pay her student loan obligations. The following explains why.

Embodied in the third prong of the Brunner Test is the implicit understanding that a student who receives a government guaranteed educational loan will make a good faith effort to repay that loan. *In re Roberson*, 999 F.2d 1132, 1136 (7th Cir. 1993). As one would expect, the primary

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[2] This test was named after the case of *Brunner v. New York State Higher Educ. Serv. Corp.*, 831 F.2d 395 (2nd Cir. 1987).

consideration in this regard – and one with which the Plaintiff has not complied – is the extent to which the student debtor actually made payments on the debt. Nevertheless, whether a debtor has actually made any payments on a student loan obligation is not completely dispositive of the issue of good faith. *See, e.g., Wegrzyniak v. United States et. al. (In re Wegrzyniak),* 241 B.R. 689, 692 (Bankr. D.Idaho 1999) (a debtor's failure to make payments does not preclude a finding of good faith when the debtor never has had the resources to make payments). Instead, given the subjective nature of the good faith test, a court should consider all relevant factors in determining the existence of good faith, subject, however, to this caveat: In the situation where a debtor has not made any payments on his or her student loan debt, the debtor's burden to demonstrate good faith is a heavy one. *In re Miller,* 254 B.R. at 205.

The purpose of the good faith requirement of the Brunner Test is to ensure that a debtor has not voluntarily caused his or her financial predicament. Thus, it is clear that a student debtor who is either willful or negligent in causing their default cannot be said to have acted in good faith. *Hollister v. Univ. of North Dakota,* 247 B.R. 485, 491 (Bankr. W.D.Okla 2000). In this regard, it is incumbent upon a debtor who has not attempted to repay their student loan obligation to show that forces beyond their reasonable control prevented them from repaying the debt. *Hurley v. Student Loan Acquisition Authority of Arizona (In re Hurley),* 258 B.R. 15, 25 (Bankr. D.Mont 2001); *Wegrzyniak v. United States (In re Wegrzyniak),* 241 B.R. 689, 692 (Bankr. D.Idaho 1999). Furthermore, implicit in this requirement is the notion that a debtor, who is unable to make their regular debt payments, will work closely with the creditor to ensure that all efforts are being made to pay the obligation; that is, when a debtor fails to make any payments on their student loan obligation, that debtor, in order to be in compliance with the good faith requirement of the Brunner Test, must have made a concerted effort to ensure the creditor that all reasonable efforts were being made to pay the student loan debt. *See Virginia Educ. Loan Auth. v. Archie (In re Archie),* 7 B.R. 715, 719 (Bankr. E.D.Va. 1980) (a debtor who made no efforts to contact creditor when she left school was not acting in good faith). This could be accomplished, for example, by a debtor seeking periodic deferments or waivers on his or her

student loan obligation. *Thoms v. Educ. Credit Management (In re Thoms)*, 257 B.R. 144, 149 (Bankr. S.D.N.Y. 2001) (good faith requires that a debtor explore other remedies available such as requesting a deferment of payment).

In the present case, however, the record is completely devoid of any such effort. In particular, there is simply no evidence in this case that the Plaintiff attempted to work out some sort of payment arrangement with the Defendant. In particular, it does not appear that the Plaintiff attempted to obtain any deferments or waivers on her student loan obligations. Along this same line, the Plaintiff did not even attempt to make a few de minimis payments on her student loan obligations. More telling, however, is the fact that the Plaintiff did not even attempt to make an initial effort to comply with the offer made by the Defendant to significantly reduce the Plaintiff's student loan obligations. Other courts have generally made the same observation: A debtor's reluctance to enter into a repayment program is to be considered as an element of bad faith, *Douglass v. Great Lakes Higher Educ. Servicing Corp. (In re Douglass)*, 237 B.R. 652, 657 (Bankr. N.D.Ohio 1999); a debtor who fails to contact the creditor to try and negotiate a repayment plan was not acting in good faith, *Virginia Educ. Loan Auth. v. Archie (In re Archie)*, 7 B.R. 715, 719 (Bankr. E.D.Va.1980); good faith established where, among other things, the debtor sought a deferment, *Goranson v. Pennsylvania Higher Educ. Assistance Agency (In re Goranson)*, 183 B.R. 52, 57 (Bankr. W.D.N.Y. 1995).

Thus, taken together, the above considerations lead to but one conclusion: The Plaintiff, although suffering from financial difficulties, simply decided to ignore her student loan obligations until such an option became no longer possible. Such a course of conduct, however, is simply incompatible with the good faith requirement of the Brunner Test. As such, the Plaintiff is not entitled to have her student loans discharged on the basis of undue hardship.

The Court's analysis, however, is not finished as a debtor encumbered with a student loan obligation, who has not complied with all of the requirements of the Brunner Test, is not necessarily

altogether foreclosed from receiving some of the benefits that bankruptcy brings in the form of relief from oppressive financial circumstances. Instead, in *Tennessee Student Assistance Corp. v. Hornsby (In re Hornsby)*, 144 F.3d 433 (6th Cir. 1998), the Sixth Circuit Court of Appeals held that it is permissible for a bankruptcy court to partially discharge a debtor's student loan obligation by virtue of a bankruptcy's court's equitable powers under 11 U.S.C. S 105(a).[3] In fact, according to the Court in *In re Hornsby*, to adopt an all-or-nothing approach to the dischargeability of a student loan debt would thwart the purpose of section 523(a)(8). *Id*. at 439. In this regard, the Court *In re Hornsby* held that permissible equitable remedies could include the following: (1) partially discharging the student loans, by discharging either an arbitrary amount of the principal, the interest accrued, or the attorney fees; (2) instituting a repayment schedule (presumably modifying the repayment terms of the loan); (3) deferring repayment; (4) permitting the debtor the option of re-opening the bankruptcy case at a later date to revisit the question of a hardship discharge; or (5) fashioning some other type of appropriate equitable remedy. *Id*. at 440.

Nevertheless, not all debtors are entitled to have a court fashion an equitable remedy for their benefit. Rather, as this Court stated in a case involving a debtor's entitlement to have his student loans discharged under § 105(a): "the court's utilization of its powers under Code § 105(a) is discretionary, and must be carefully honed in light of the facts of the case, applicable precedent and appropriate policy." *Grine v. Texas Guaranteed Student Loan Corp. (In re Grine)*, 254 B.R. 191, 199 (Bankr. N.D.Ohio 2000). Therefore, merely establishing that a debtor will receive a benefit by the court employing its equitable powers is insufficient, by itself, to warrant the application of § 105(a) because

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[3] This section provides that, "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

all debtors would in some way benefit by such an action. Instead, as this Court has done on past occasions, a debtor will only be found to be entitled to an equitable remedy regarding his or her student loan obligation if it can be shown that the equities of the situation tip distinctly in their favor. *In re Miller*, 254 B.R. at 206; *Grine v. Texas Guaranteed Student Loan Corp. (In re Grine)*, 254 B.R. 191, 199 (Bankr. N.D.Ohio 2000); *Boyd v. U.S. Dep't of Educ. (In re Boyd)*, 254 B.R. 399, 405 (Bankr. N.D.Ohio 2000); *Fraley v. U.S. Dept. of Ed. (In re Fraley)*, 247 B.R. 417, 422 (Bankr. N.D.Ohio 2000).

A review of the facts present in this case shows that such a standard has undoubtably been met. In particular, the Court observes that given her particular circumstances, the Plaintiff has clearly utilized her best efforts to maximize her earning potential. Similarly, the Plaintiff has made a good faith effort to minimize her expenses. In addition, when all the events of this case are considered, it is clear that the Plaintiff's financial circumstances are reasonably caused by events which are beyond her control (e.g., medical problems). As for the type of equitable relief that the Plaintiff should be afforded, the Court finds that it would be appropriate to provide the Plaintiff with a partial discharge of her student loan obligations. The specific amount of this discharge shall consist of lowering the entire amount of the Plaintiff's student loan obligation to Four Thousand Five Hundred dollars ($4,500.00) with no interest due thereon. On this obligation, however, the Plaintiff will be expected to pay at least Four Hundred Fifty dollars ($450.00) per year over a maximum period of ten (10) years; this figure was reached by considering that the Plaintiff, on an annual basis, receives bonuses from her place of employment of approximately Five Hundred dollars ($500.00). Notwithstanding this decision, the Court is also cognizant of the fact that the Plaintiff has received a very tangible benefit from her educational loans. As a result, this Court's decision will only be in force so long as the Plaintiff strictly complies with the terms of this Court's order. Stated in another way, if the Plaintiff fails to make a payment of Four Hundred Fifty dollars ($450.00) in any given year, the entire amount of her student loan obligations, including any interest which would have otherwise accrued thereon, will become a nondischargeable debt.

In reaching the conclusions found herein, the Court has considered all of the evidence, exhibits and arguments of counsel, regardless of whether or not they are specifically referred to in this Decision.

Accordingly, it is

ORDERED that the student loan obligations of the Plaintiff, Cathy Jo Schreima, to the Defendant, the U.S. Dept. of Education, be, and are hereby, determined to be nondischargeable debts in bankruptcy pursuant to 11 U.S.C. § 523(a)(8).

It is ***FURTHER ORDERED*** that the Plaintiff's nondischargeable student loan obligation to the Defendant be, and is hereby, determined to be Four Thousand Five Hundred dollars ($4,500.00) pursuant to this Court's authority under 11 U.S.C. § 105(a). Further, no interest shall accrue on this obligation while the Plaintiff is in compliance with all the terms of the orders enumerated herein.

It is ***FURTHER ORDERED*** that the Defendant provide to the Plaintiff an address as to where payments on the Plaintiff's nondischargeable obligation may be tendered.

It is ***FURTHER ORDERED*** that the Plaintiff make voluntary payments to the Defendant of at least Four Hundred Fifty dollars ($450.00) per year. The first of such payments shall become due, in full, on the 15th day of January in the year 2002. Such payments shall then continue to become due, in full, on the 15th day of January in each succeeding year thereafter until the obligation set forth in this decision is paid in full. Nothing in this Order shall prevent the Plaintiff from paying her annual obligation earlier and/or in monthly installments as long as the entire amount due is paid on or before the above-specified date.

It is ***FURTHER ORDERED*** that if the Plaintiff, at any time, fails to timely make her payments as they become due, the entire original amount of the Plaintiff's student loan obligations, including any interest that otherwise would have accrued thereon, will become a nondischargeable debt in bankruptcy.

Dated:

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Richard L. Speer
United States
Bankruptcy Judge