UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	)	CASE NO. 03-51889
	)	
ELEANOR TAYLOR,	)	CHAPTER 7
	)	
DEBTOR(S)	)	
	)	
ELEANOR TAYLOR,	)	**ADVERSARY NO. 03-5177**
	)	
PLAINTIFF(S),	)	JUDGE MARILYN SHEA-STONUM
	)	
vs.	)	
	)	
SALLIE MAE SERVICING, ET AL.	)	**ORDER DENYING MOTION FOR RECONSIDERATION [DOCKET #38]**
	)	
DEFENDANT(S).	)	

The Court conducted a trial in this proceeding on October 18, 2004. Pursuant to that trial the Court, on November 17, 2004, issued a "Memorandum Opinion Re: Dischargeability of Educational Loans Pursuant to 11 U.S.C. §523(a)(8)" [docket #36] and entered judgment [docket #37] in favor of plaintiff-debtor and against defendant, The Pennsylvania Higher Education Assistance Agency ("PHEAA").

On November 29, 2004, PHEAA filed a "Motion for Reconsideration of Non-Dischargeability of Student Loans" [docket #38] (the "Motion for Reconsideration") and a memorandum in support of that motion [docket #39]. On December 30, 2004, plaintiff-debtor filed a memorandum in opposition to PHEAA's motion for reconsideration [docket #48] and on January 10, 2005, PHEAA filed a response to plaintiff-debtor's pleading [docket #50].

PHEAA filed its Motion for Reconsideration pursuant to FED. R. CIV. P. 59(e) which is made applicable to bankruptcy proceedings by FED. R. BANKR. P. 9023. Such motions are within the discretion of the trial court to grant or deny and are appropriate only to correct manifest errors of fact or law or to present newly discovered evidence. *Huff v. Metropolitan Life Ins. Co.*, 675 F.2d 119, 122 (6th Cir. 1982); *In re Oak Brook Apartments of Henrico Cty., Ltd.*, 126 B.R. 535, 536 (Bankr. S.D. Ohio 1991). Motions for reconsideration are not appropriate if they are used merely to re-litigate issues which were already decided or as a substitute for an appeal. *In re Oak Brook Apartments of Henrico Cty., Ltd.*, 126 B.R. 535, 536 (Bankr. S.D. Ohio 1991).

In its memorandum in support of its Motion for Reconsideration, PHEAA does not contend that it has discovered new evidence. Nor does PHEAA contend that this Court applied the incorrect law.[1] Instead, PHEAA argues that this Court committed error in applying the law to the facts of this case.

Although PHEAA clearly disagrees with this Court's findings of fact and conclusions of law, such disagreement does not equate to a commission of "manifest" error by this Court in making those findings and conclusions. The term "manifest" is defined as "evident to the mind, not obscure or hidden" and is synonymous with "open, clear, visible, unmistakable,

---

[1] At the time of the trial in this matter the law in the Sixth Circuit required trial courts to apply a three prong test set forth in the case of *Brunner v. New York State Higher Educ. Serv. Corp.*, 831 F.2d 395 (2d Cir. 1987) in conjunction with the consideration of additional factors such as those set forth by the Sixth Circuit in *Miller v. Pennslyvania Higher Educ. Assistance Agency (In re Miller)*, 377 F.3d 616, 623 (6th Cir. 2003). On February 3, 2005 the Sixth Circuit entered an opinion in which it determined that its "'hybrid-*Brunner*' model for assessing undue hardship foments confusion because our so-called 'other-factors' actually fit easily into the well-accepted *Brunner* analytical template." *Oyler v. Educ. Credit Mgmt. Corp. v. Oyler (In re Oyler)*, 2005 WL 241286 at *2 (6th Cir. Feb. 3, 2005). Accordingly, the Sixth Circuit has now adopted the *Brunner* test as the law of this Circuit in considering whether a student loan can be discharged as imposing an undue hardship on a debtor.

indubitable, indisputable, evident and self-evident." BLACK'S LAW DICTIONARY, 662 (6th ed. 1990).

An example of PHEAA's contention that "manifest" error occurred regards this Court's consideration of plaintiff-debtor's lack of health insurance in finding that plaintiff-debtor's current financial adversity was more than just a temporary state of affairs.

> From the commencement of the adversary proceeding until immediately before trial, Debtor/Plaintiff maintained health insurance. At trial, Debtor/Plaintiff testified that she currently is not enrolled in health insurance. However, Debtor/Plaintiff provided no evidence to demonstrate that her temporary lack of health insurance would continue into the future. . . . A temporary financial downturn and a lack of insurance for a matter of a few months in no way evidences that this state of affairs will persist for a significant period of time. Therefore, the Court's conclusion that Debtor/Plaintiff, based on her current lack of health insurance, satisfied the second prong of the *Brunner* test is in contradiction to the record, which in no way evidences that such lack of health insurance is likely to continue for a significant portion of the repayment period.

PHEAA Mem. in Support of Mot. for Reconsid. at pp. 20-21 [docket #39]. Pursuant to the trial in this matter the Court made the following findings:

> 7. Prior to her remarriage, plaintiff-debtor faced difficulty each month in paying her bills (including the Student Loan Obligation) and she did not have any health insurance. After the remarriage, plaintiff-debtor was covered under Mr. Pickel's health insurance and they pooled their income to pay all of their monthly expenses including payments due on the Student Loan Obligation.
>
> 10. In April 2004, Mr. Pickel involuntarily lost his job at Crane and Shovels Sales Corp. Since losing that job, plaintiff-debtor and her husband have had no health insurance.
>
> 11. Plaintiff-debtor has inquired about purchasing health insurance for her and her husband and received a quote of $467.00 per month. That monthly premium may, however, be higher given plaintiff-debtor's health problems.

20. Plaintiff-debtor has high blood pressure and high cholesterol and needs to take approximately $170.00 worth of medication per month. During some months plaintiff-debtor cannot afford to purchase all the medicine she needs. Plaintiff-debtor's medical conditions do not interfere with her job as a real estate agent.

Mem. Op. at pp. 4-5 [docket #36]. Based upon those findings regarding plaintiff-debtor's lack of health insurance and other factual finding regarding plaintiff-debtor's "limitation on employment, . . . age, limited educational background, lack of retirement savings, [and] medication requirements," this Court held that plaintiff-debtor's then current financial adversity was more than just a temporary state of affairs. Mem. Op. at p. 9. Although plaintiff-debtor may not have specifically testified during trial that her " lack of health insurance is likely to continue for a significant portion of the repayment period," this Court, as the trier of fact, was required to and did weigh conflicting facts, determine the credibility of witnesses and draw inferences from the evidence presented. *See* FED. R. BANKR. P. 8013.

Subsequent to PHEAA filing its Motion for Reconsideration, the Sixth Circuit issued an opinion regarding dischargeability of student loans in which it found that the Bankruptcy Court erred when finding that the debtor had shown "additional circumstances . . . indicating that this state of affairs is likely to persist for a significant portion of the repayment period." *Oyler v. Educ. Credit Mgmt. Corp. v. Oyler (In re Oyler)*, 2005 WL 241286 at *2 (6th Cir. Feb. 3, 2005). *See also* footnote 1, *supra*. Specifically, the Sixth Circuit found that the Bankruptcy Court erred in failing to consider that the debtor voluntarily decided not to maximize his earnings after he voluntarily incurred the student loan debt he was attempting to discharge. *Oyler* at *2. This Court has reviewed that decision and finds it to be inapplicable to the facts in this case given that the debtor herein was not underemployed.

In that recent decision, the Sixth Circuit also noted that, although the debtor might not be eligible for an undue hardship discharge of his student loans, he still had other areas of relief open to him such as the William D. Ford consolidation program's income contingent repayment plan (the "ICRP"). *Oyler v. Educ. Credit Mgmt. Corp. v. Oyler (In re Oyler)*, 2005 WL 241286 at *3, note 2 (6th Cir. Feb. 3, 2005) In determining whether a student loan may be discharged pursuant to 11 U.S.C. §523(a)(8) this Court routinely considers whether a debtor has availed herself of alternative repayment options such as the ICRP in which the amount of the debtor's required monthly payment is determined and then recalculated yearly based upon that debtor's adjusted gross income. If a debtor appears to be eligible for programs such as the ICRP, this Court will often times abate the adversary proceeding to determine dischargeability in order to allow the debtor to explore participation in such a program. In the case at bar, the parties stipulated to the fact that Eleanor Taylor is not eligible to participate in the ICRP.

This Court has fully considered PHEAA's Motion for Reconsideration and all pleadings in support thereof. Based upon such review, the Court finds that PHEAA's Motion for Reconsideration is not well taken. Accordingly, that motion is hereby DENIED.

IT IS SO ORDERED.

MARILYN SHEA-STONUM
U.S. Bankruptcy Judge

❖ ❖ ❖ ❖ ❖ ❖ ❖ ❖ ❖ ❖

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of FEBRUARY 2005, a copy of the foregoing **ORDER DENYING MOTION FOR RECONSIDERATION [DOCKET #38]** was sent via regular U.S. Mail to the following:

SUSAN GRAY
21330 Center Ridge Rd.
Suite 11
Rocky River, OH 44116
Counsel for Plaintiff-Debtor

MARK YOUNG
Brouse McDowell
1001 Lakeside Avenue
Suite 1600
Cleveland, OH 44114
Counsel for Defendant, PHEAA

S. Norman
Clerk