

**United States Bankruptcy Court
Western District of Wisconsin**

Cite as: [Unpublished]

**Barbara A. Gale, Plaintiff, v. Educational Credit
Management Corporation, Defendant**

(In re: John H. Gale and Barbara A. Gale, Debtors)
Bankruptcy Case No. 10-11135-7
Adv. Case No. 10-62

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

October 26, 2010

James V. Block, Byrne & Krautkramer Law Office, Wausau, WI, for plaintiff
Jeffrey W. Guettinger, Richie, Guettinger & Manydeeds, S.C., Eau Claire, WI, for defendant

Thomas S. Utschig, United States Bankruptcy Judge

MEMORANDUM DECISION

The Court conducted the trial in this adversary proceeding on October 6, 2010. Attorney James V. Block appeared on behalf of the plaintiff, and Attorney Jeffrey W. Guettinger appeared on behalf of the defendant. This decision shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and Rule 52 of the Federal Rules of Civil Procedure.

The debtor owes approximately \$14,500.00 in student loans to the defendant. She seeks to discharge that obligation under 11 U.S.C. § 523(a)(8), which provides that student loan obligations may only be discharged if they “impose an undue hardship on the debtor and the debtor’s dependents.” The debtor is 56 years old. She made payments totaling approximately \$1,485.00 on her obligations. She suffers from a variety of medical conditions, including the following: spondylolisthesis, nerve root impingement, asthma, hypertension, dyslipidemia, foot and shoulder disabilities, and chronic knee pain. She takes a large number of medications for her health problems. She has been declared permanently disabled and collects social security disability payments. She is currently unemployed because of her disabilities. She has worked at various jobs within the past five years but resigned from the most recent positions because her health problems precluded her continued employment.

The creditor objects to discharge of the student loans and contends that the debt does not constitute an “undue hardship” as the phrase has been defined by

the Seventh Circuit in cases such as In re Roberson, 999 F.2d 1132 (7th Cir. 1993), and Goulet v. Educ. Credit Mgmt. Corp., 284 F.3d 773 (7th Cir. 2002). Under the “three-pronged” test for undue hardship outlined in those decisions, the debtor must demonstrate that (i) she cannot maintain, based on current income and expenses, a minimal standard of living for herself and her dependents if forced to repay the loans; (ii) additional circumstances exist indicating that the state of affairs is likely to persist for a significant portion of the repayment period; and (iii) the debtor has made a good faith effort to repay the loans. Goulet, 284 F.3d at 777.

The Court finds that the debtor cannot maintain a minimal standard of living if forced to repay the loans. She is unable to work due to chronic pain and disability. She receives approximately \$680.00 per month in disability payments. Her husband nets less than \$1,500.00 per month, and they have significant out-of-pocket medical costs associated with her health problems. The debtor’s testimony indicated that she and her husband live frugally, and their budget does not account for the possibility of additional medical or other expenses which might arise in the future. The debtor need not live in abject poverty in order to satisfy the first prong of the undue hardship test; it is sufficient that they demonstrate that they will live within the strictures of a frugal budget for the foreseeable future. Larson v. United States (In re Larson), 426 B.R. 782, 789 (Bankr. N.D. Ill. 2010). The debtor has also made a good faith effort to repay the loans, having paid roughly 10% of the outstanding obligation over the past several years.

Consequently, the only issue is the existence of “additional circumstances” that indicate her current situation is likely to persist. The dischargeability of student loans “should be based upon the *certainty of hopelessness*, not simply a present inability to fulfill financial commitment.” Roberson, 999 F.2d at 1135-36; Goulet, 284 F.3d at 778. The debtor has demonstrated that her health problems, which are significant enough for her to have been declared permanently disabled, are likely to persist for the duration of the repayment period, if not the remainder of her life. The record also reflects that her husband’s contributions to their finances will remain constant and is not subject to any significant increase in the foreseeable future. Further, the debtor’s dire financial condition is likely to persist for a significant portion of the repayment period, while the debtor’s health problems are “not of a short-term nature and are unlikely to change for the better in the future.” Larson, 426 B.R. at 795.

Based upon the record, the Court concludes that the student loans at issue impose an undue hardship within the meaning of 11 U.S.C. § 523(a)(8) and are therefore dischargeable.