

#2521

signed 3-27-00

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In Re:

**MOHAMMAD SAEED and
KATHLEEN M. D'ANNETTE,**

DEBTORS.

**CASE NO. 99-41184-7
CHAPTER 7**

KATHLEEN M. D'ANNETTE,

PLAINTIFF,

v.

ADV. NO. 99-7042

**UNITED STUDENT AID FUNDS and
EDUCATIONAL CREDIT MANAGEMENT
CORPORATION,**

DEFENDANTS.

MEMORANDUM OF DECISION

This proceeding is before the Court for decision following a bench trial. Debtor Kathleen M. D'Annette ("Debtor") seeks to discharge a student loan debt on the basis of undue hardship pursuant to 11 U.S.C.A. §523(a)(8). The Debtor appears by counsel Mark W. Works. Defendant Educational Credit Management Corporation ("ECMC") appears by counsel N. Larry Bork. There are no other appearances. The Court has heard the evidence, reviewed the relevant materials, and is now ready to rule.

FACTS

The Debtor is a 34-year-old woman and is married to Mohammad Saeed, who is 50 years old. They married in 1992, have no dependents, and are both unemployed. Mr. Saeed receives a Veterans' Administration disability pension of \$1,046 per month, and a Social Security Disability Insurance benefit of \$400 per month. At the time of trial, the federal Department of Health and Human Services annual income poverty guideline was \$11,060 for a family of two, or about \$920 per month. *See Annual Update of the HHS Poverty Guidelines*, 64 Fed. Reg. 13428, 13428 (1999). The Debtor provides full-time care for her husband, who suffers from blindness, bi-polar disorder, and arthritis, and is hard of hearing and sometimes has seizures. The Debtor has been diagnosed with a medical condition for which she takes an antidepressant drug daily.

The Debtor attended various colleges and universities between 1983 and 1991, reaching senior-level status but not completing a degree. She took out various student loans, and in May 1992, consolidated them into a single loan. She made some payments after the consolidation, but has made none in the recent past. In January 1993, the unpaid interest on the consolidated loan was capitalized, making her monthly payment obligation \$134.28, to be paid for fifteen years. Since she has not complied with the payment schedule, additional interest has accrued that would either increase the size of her monthly obligation or lengthen its duration. As of June 25, 1999, she owed \$26,666.90 to ECMC, the holder of the consolidated loan. Mr. Saeed was not married to the Debtor when she obtained her student loans, and has never had any obligation to pay this debt. On their bankruptcy schedules, besides the Debtor's student loan debt (incorrectly identified as a priority debt), the couple listed over \$50,000 in joint unsecured debts, including debts owed to medical providers, utility

companies, former landlords, local stores, and several bill collectors acting on behalf of numerous other creditors.

Their monthly budget indicates the Debtor and Mr. Saeed maintain only a minimal standard of living. They do not own an automobile. Mr. Saeed obtains health care and medicine from the Veterans' Administration. The Debtor does not have health insurance, and obtains health and dental care from clinics serving low-income people. The couple pays about \$100 per month to a rent-to-own company for a recliner, washer and dryer, although they should have them paid off in two to three years. Mr. Saeed spends about \$50 per month on pipe tobacco and supplies, and about \$45 per month on pet food and supplies. The couple has received some assistance from charitable organizations; for example, an Islamic one replaced the Debtor's glasses for her.

As a result of his physical condition, Mr. Saeed requires living assistance that the Debtor provides. If she were to go to work, he would have to move into an assisted-care facility, or they would have to hire someone to come to their home to care for him. Any money the Debtor might earn would also cause some reduction in Mr. Saeed's disability benefits. The Debtor has no special skills that make it likely she could earn a substantial salary. The couple has no reason to expect any inheritance or any income from other sources in the future.

DISCUSSION AND CONCLUSIONS

Section 523(a)(8) excepts the Debtor's student loan debt from her discharge "unless— . . . excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents." The burden of proof is on the Debtor to convince the Court as the trier

of fact that payment of the student loan would impose an undue hardship on her and her husband. She must show that she would suffer more than that degree of hardship which generally causes debtors to seek the protection of the Bankruptcy Code, that is, a present inability to pay her debts. In addition, she must show that despite the relief afforded by the discharge of other debts, she will continue to suffer more than a future inconvenience or even some degree of hardship.

“Undue hardship” is not defined in the Bankruptcy Code or controlling case law, and this Court believes the question ultimately becomes whether the Debtor will be able to repay her student loan debts in the foreseeable future without (1) being forced to seek state or federal welfare aid, or (2) ensuring that she will be a permanent member of the growing underclass in our society. The Court must determine whether it is reasonably or realistically possible that she can pay or service the loans in the foreseeable future. *See United States v. Brown (In re Brown)*, 18 B.R. 219, 222-224 (Bankr.D.Kan. 1982); *Turner v. Detroit and Northern Savings (In re Turner)*, 69 B.R. 62, 63-64 (Bankr.D.Minn. 1986). The purpose of §523(a)(8) is to prevent abuse of the Bankruptcy Code by individuals who, having financed their education, file petitions upon graduation and seek to discharge their student loans without making any good faith attempt to repay them, especially when the likelihood of their obtaining well-paying jobs has been enhanced by the education they received and they have little or no reason to file for bankruptcy other than the student loans. *See H.R.Rep. No. 595, 95th Cong., 1st Sess. 133 (1977), reprinted in 1978 U.S.C.C.A.N. 5787, 6094; Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 137, 93d Cong., 1st Sess., Pt. II 140, n. 14 (1973)*. The facts of this case do not indicate that the Debtor is abusing the spirit or purpose of bankruptcy law. Besides her sizeable student loan debt, the Debtor and her

husband owed about \$50,000 in unsecured debts when they filed for bankruptcy. With their limited income, these debts gave them plenty of reason to file even if no student loan debt had been involved.

The Debtor is unable to work outside the home because of her husband's medical conditions and physical disabilities. Because the Debtor could not devote her time to his care while she worked, if she took a job, they would either have to place her husband in an assisted-care facility or hire a full-time care giver, requirements that would carry significant costs. Whatever income she might derive from working would also cause a reduction in her husband's disability benefits. To overcome these difficulties, the Debtor would have to obtain a job that provided a substantial income, but this is unlikely because she has no special work skills. Moreover, the couple's current budget is helped by the fact they do not have a car, but this fact would limit the Debtor's work options. Adding car expenses would further reduce the already slim chance that the Debtor could earn enough to overcome the burdens her working would add to their budget. None of the evidence presented indicated these circumstances are likely to change in the foreseeable future.

While Mr. Saeed's smoking and pet expenses are more or less discretionary, the Court does not believe it can require him to eliminate them so that his wife might be able to pay her student loan debt. He does not owe that debt. This is not a situation where Mr. Saeed is paying less than his share of the family living expenses, and thus requiring his wife to direct her income to those expenses rather than to her creditor.

The Court concludes the Debtor has no present ability to pay her student loan debt and there is no real likelihood that she will in the foreseeable future become able to pay it. Consequently, the

Debtor's obligation to ECMC is dischargeable under §523(a)(8)(B) because excepting the debt from discharge would impose an undue hardship on the Debtor and her husband.

The foregoing constitutes Findings of Fact and Conclusions of Law under Rule 7052 of the Federal Rules of Bankruptcy Procedure and Rule 52(a) of the Federal Rules of Civil Procedure. A judgment based on this ruling will be entered on a separate document as required by FRBP 9021 and FRCP 58.

Dated at Topeka, Kansas, this ____ day of March, 2000.

JAMES A. PUSATERI
CHIEF BANKRUPTCY JUDGE