SO ORDERED.

SIGNED this 08 day of March, 2005.

Dale L. Somers

Dale L. Somers
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In Re: **TRISHA CORRINE HARRINGTON,** **DEBTOR.**	**CASE NO. 02-24488-DLS** **CHAPTER 7**
TRISHA CORRINE HARRINGTON, **PLAINTIFF,** **v.** **EDUCATIONAL CREDIT MANAGEMENT CORPORATION, et al.,** **DEFENDANTS.**	**ADV. NO. 03-6067**

MEMORANDUM AND ORDER GRANTING
DEBTOR'S COMPLAINT FOR DISCHARGE OF STUDENT LOANS

This is an adversary proceeding pursuant to 11 U.S.C.A. § 523(a)(8)[1] to determine the dischargeability of Debtor's student loan indebtedness to defendant Educational Credit Management Corporation ("ECMC"). The plaintiff Debtor, appears by Jason R. Ballard of the law offices of David M. Gleason. The defendant, ECMC, appears by N. Larry Bork, of Goodell Stratton Edmonds & Palmer, LLP. This is a core proceeding[2] over which the Court has subject matter jurisdiction.[3] Venue is proper.[4] The parties do not contest jurisdiction or venue.

Debtor filed for relief under Chapter 7 on November 29, 2002. Debtor filed a complaint to determine dischargeability on March 31, 2003. Plaintiff's first amended complaint was filed on November 30, 2003. Debtor's amended complaint alleges that her student loan obligation should be discharged because a portion of her student loans became due more than seven years prior to the filing of debtor's 1993 bankruptcy chapter 7 bankruptcy petition[5], because excepting the Debtor's student loan debt from discharge will impose an undue hardship on Debtor and the dependent of Debtor, and because repayment of the student loans by the Debtor would be unconscionable. In the alternative, the Debtor requests the Court to find that, although the principal portion of the student loan debt is nondischargeable, the remaining interest or penalty portion is dischargeable.

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[1] Future references to the Bankruptcy Code in the text shall be to the section only.

[2] 28 U.S.C.A. §157(b)(2)(I).

[3] 28 U.S.C.A. § 1334.

[4] 28 U.S.C.A. § 1408.

[5] This basis for relief is not included in the Final Pretrial Conference Order and is therefore deemed abandoned.

The parties stipulated in the Final Pretrial Conference Order[6] that the Debtor on or about December 13, 2001 consolidated her student loan debts in the amount of $63,822.72, with a fixed 6.5% annual percentage rate. They further stipulated that as of December 18, 2003, the total amount due and owing was $72,245.37.

An evidentiary hearing was held on February 3, 2005. The Debtor testified, and the Court heard argument. The Court is now ready to rule.

FINDINGS OF FACT.

Having heard the testimony of witnesses and considered the exhibits admitted into evidence, the Court makes the following findings of fact.

Debtor, Trisha Corrine Harrington, is a single, 38 year old woman and the mother of one child, TJ, who was born in 1993. TJ lives with Debtor. Although Debtor knows the identity of TJ's father, she has not sought to enforce her right to child support because of threats made by members of the father's family. When Debtor applied for welfare benefits when TJ was a toddler, Debtor was granted an exception to the requirement that she pursue child support as a condition to the receipt of benefits because of threats made against her life and TJ's life.

Debtor obtained eight student loans. The first set of loans date from 1990 through 1992, when Debtor was an undergraduate student at Kansas State University. During her pregnancy after graduation from undergraduate school, Debtor received a deferment for payment of the undergraduate loans on a hardship basis. The second set of loans, in the amount of $37,000, financed

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[6] Doc. 64.

Debtor's education during 1999 and 2000 at the University of Arkansas, where she attained an advanced degree in rehabilitation counseling, with emphasis in deafness. The loan consolidation agreement provides for payment of the loans at 6.5% interest over 25 years by payment of approximately $430 per month. Debtor could not remember whether she made any payments on the consolidated loan.

Both the Debtor and her son suffer from significant medical problems, which have gotten worse since Debtor consolidated her student loans. Since filing for bankruptcy in November, 2002, additional medical conditions have been diagnosed. Debtor has been profoundly deaf since birth. Debtor is not able to hear speech or understand speech; she appeared at trial with a translator. She relies heavily on visual communication. She has a hearing aid in her right ear, and can hear nothing without that assistance. She has a hearing dog to alert her in the event of emergency. The dog is almost 10 years old. After the dog retires, Debtor will have the expense of a new way to be more aware of sound. In addition, Debtor suffers from hypertension, high cholesterol, swelling on the brain, allergies, and anxiety. On a regular basis, because of these conditions, Debtor is prescribed Diabom for hypertension, Lipitor for high cholesterol, Tricimite for swelling on her brain, Flonase for her allergies, and Sellexal for anxiety. Debtor is treated by Dr. Kimberly Russell on the average once a month and is seen by a neurologist twice a year. She has also been referred to a cardiologist. Debtor has an audiologist whom she saw more often than usual during the year prior to the hearing because of a noticeable deterioration in her hearing. Debtor has incurred expenses with Heart of America Eye Care for her prescription glasses.

Debtor's son has been diagnosed with ADHD, obsessive-compulsive disorder (OCD) and anxiety disorder before 2001. Debtor takes her son to see a psychiatrist, Dr. Brown, every 2 or 3 months. He is being treated for ADHD, anxiety, and OCD. TJ is prescribed Concerta and Ritalin for ADHD. He is prescribed Sellexa for anxiety and Zyprexa for OCD. Because of his age, TJ gets his eyeglasses prescription updated every year. pays for TJ to go to an after school care program, for which he will not be eligible when he goes to middle school. Because he does not have the mental capacity or confidence to stay home alone, child expense care expenses will continue.

After obtaining her bachelor of science degree with a major in sociology-criminal justice in December 1993 from Kansas State University, Debtor was initially able to find employment in her field, but she was let go because of her hearing impairment. To support her infant son, she took various minimum wage jobs, including employment as an independent living counselor, where she worked with deaf individuals. It was during this employment that she found her calling. Because she could not raise her son on $12,000 to $13,000 a year she was earning, Debtor took out student loans so she could attend graduate school in her chosen field.

After receiving her additional education, Debtor on October 29, 2001, became employed as a rehabilitation counselor with the Kansas Rehabilitation Services. Debtor is paid every two weeks and in 2005 receives between $990 and $995 per paycheck. Debtor's annual take-home pay is therefore approximately $25,768. She received a small cost-of-living raise in 2004. Debtor does not foresee either significant payroll increases or promotions. Through her employment, Debtor has medical insurance, dental insurance, and prescription the drug coverage for herself and her son.

Debtor owns no real property and no investment assets, other than an annuity having a cash value of $800. Debtor's personal property, all of which except for a small amount of cash was claimed as exempt, is shown on her schedule B as having a value of $3,892, which amount includes the $800 annuity. Since filing, Debtor has purchased a 2002 Mitsubishi, valued at approximately $10,000. Debtor uses her car for personal and work related travel. Her monthly payments on a 60 month loan are $276.22.

Debtor's amended schedule I, filed February 5, 2004, shows total monthly take-home pay from the Kansas Rehabilitation Services of $2,137 and $900 from the Church of Jesus Christ of Latter-Day Saints, for a total of $3,037. Debtor is a member, but not an employee, of the Church; she receives the money as grant assistance. The grant could stop at any time. In early 2004, Debtor received a federal tax refund of $1,707 and a state refund of $288. As of the time of trial, Debtor had not prepared her 2004 tax returns and did not know the amount of any refund to which she might be entitled.

Debtor's amended schedule J, also filed on February 5, 2004, shows total monthly expenses of $3,195.22. There was no evidence that any of the expenses are unreasonable. The testimony established some minor adjustments in these expenses. Debtor's rent has increased from $735 to $765 per month for a two-bedroom, two- bathroom apartment. The utility costs as listed are accurate, with the exception that the cost of cable has increased from $35 to $48, and Debtor has an Internet expense of $18.95 per month. There has been no adjustment in the home maintenance cost of $30 or food cost of $375. The clothing cost of $30 has increased in an unspecified amount because TJ is getting bigger and growing fast. Laundry and dry cleaning costs of $30 are accurate. Debtor has a washer, but her dryer is broken. Debtor's medical costs, listed on schedule J at $350 per month, have increased because insurance co-pays have increased, as have TJ's medications. Debtor estimated that her transportation costs have increased by $20 from the $160 per month listed when she filed her amended schedule J.[7] Debtor's expenses include nothing for recreation. Debtor's charitable contribution of $100 per month is for her contribution to her Church, which she has consistently given. Debtor has no insurance costs other than medical, which is deducted from her paycheck, and auto for $62 per month. The hearing dog insurance previously listed as $12 per month has been dropped. Debtor's car payments are $276.22 per month, and the taxes on her car are approximately $25 per month. Debtor pays $400, rather than the $500 listed on schedule J, as payday loan finance charges. The expenses for her hearing dog of $41, for child care of $238, and personal hygiene of $20 have not changed. The foregoing decreases and the combined specific and nonspecific increases appear to offset each other.

There was considerable testimony concerning the payday loan finance charge expense of $400 per month, which is $4800 per year. After filing for bankruptcy relief, Debtor obtained at least six payday loans because of Debtor's and TJ's increasing medication costs. One loan was paid off in June 2004, and the loans outstanding at the time of trial are in the amounts of $500, $200, $250, $250, and $100. When obtaining the loans, Debtor wrote a check for the principal of loan, plus the finance charge. For example, when borrowing $100, the Debtor gave the lender a check for $115. When that loan matured (presumably on the Debtor's pay day, which is every two weeks), Debtor gave the lender $115 cash in exchange for the check and then renewed the loan by receiving $100 cash in exchange for

[7] Debtor is reimbursed by the state for business related use of her vehicle. The monthly car expenses do not take into consideration the reimbursement. The testimony about Debtor's car expenses was murky at best, but the Court concludes that she has monthly car expense for personal use that is not covered by the state reimbursement.

a new $115 check. The total payoff on all five loans on the time of trial was $1,478.50.

The Court finds that the Debtor's monthly expenses at the time of trial were $3,195.22.

DISCUSSION AND CONCLUSIONS OF LAW.

Section 523(a)(8) provides that a discharge under section 727 does not discharge an individual from a debt for an educational loan made, insured, or guaranteed by a governmental unit "unless excepting such debt from discharge under this paragraph will have an undue hardship on the debtor and the debtor's dependants."[8] The section is self-executing and "[u]nless the debtor affirmatively secures a hardship determination the discharge order will not include a student loan debt."[9] Here, the Debtor has filed a dischargeability complaint, and it is undisputed that the loans in issue are student loans for the purposes of section 523(a)(8).

"Undue hardship" is not defined by the Bankruptcy Code. In this circuit, the standard for "undue hardship" requires satisfaction of the three-part test adopted by the Second Circuit in *Brunner v New York State Higher Education Services Corp.*[10], as interpreted in by the Tenth Circuit in *Educational Credit Management Corporation v. Polleys.*[11] In *Brunner*, the Court stated the required three-part showing as follows:

> (1) that the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist

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[8] 11 U.S.C.A § 523(a)(8).

[9] *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 124 S. Ct.1905, 1912, 158 L. Ed. 2d 764 (2004).

[10] 831 F. 2d 395 (2nd Cir. 1987) (hereinafter "*Brunner*").

[11] 356 F. 3d 1302 (10th Cir. 2004) (hereinafter "*Polleys*").

> indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good-faith efforts to repay the loans.[12]

Each of the three parts must be satisfied before the debtor is entitled to discharge the student loan.[13]

The Tenth Circuit's adoption of the *Brunner* framework included the following caveat: We therefore join the majority of the other circuits in adopting the *Brunner* framework. However, to better advance the Bankruptcy Code's "fresh start" policy, and to provide judges with the discretion to weigh all the relevant considerations, the terms of the test must be applied such that debtors who truly cannot afford to repay their loans may have their loans and discharged. Additionally, we think that the good-faith portion of the *Brunner* test should consider whether the debtor is acting in good faith in seeking the discharge, or whether he is intentionally creating his hardship.[14]

The Court will now apply each of the three standards to the facts of this case, but, before doing so, pauses to consider the nature and purposes of student loans and the policy of restricting discharge. One court has described the student loan program as follows:

> The guaranteed student loan program offers loans without regard to the borrower's credit worthiness. As such, student loans are a great benefit to those who would not ordinarily qualify for a loan otherwise. The student loan represents an investment in the borrower's future ability to generate income. Consequently, there is an expected likelihood of changed circumstances based on educational training – that is the borrower will locate employment with income sufficient to repay his student loan obligations.
>
> However, this is not always the case. Oftentimes, through no fault of the borrower, he is unable to generate the expected income.[15]

Section 523(a)(8) was recommended because of a "rising incidence of consumer bankruptcies of

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[12] *Brunner*, 831 F.2d at 396.

[13] *Polleys*, 356 F.3d at 1307.

[14] *Id*. at 1309.

[15] *Speer v. Educational Credit Management Corporation (In re Speer)*, 272 B.R. 186, 192 (Bankr. W.D. Texas 2001).

former students motivated primarily to avoid payment of educational debts."[16] Allowing the discharge of student loan obligations by recent graduates who had a substantial earning potential but little or no nonexempt assets would contravene the general policy that a loan that "enables a person to earn substantially greater income over his working life should not as a matter of policy be dischargeable before he has demonstrated that for any reason he is unable to earn sufficient income to maintain himself and his dependents and to repay the educational debt."[17] The undue hardship standard promotes this purpose. It is deprives student loan borrowers of discharge when the facts and circumstances show that the loan enabled the debtor to earn greater income which can be dedicated to the repayment of the student loan while a minimal standard of living is maintained. On the other hand, in those situations where notwithstanding the additional education and the absence of fault of the borrower, the debtor can not both pay the loan and maintain a minimal standard of living, the availability of discharge is consistent with the public policy. For example, if the funded education was severely deficient or long lasting severe medical problems cause the debtor to be unemployed or only marginally employed, allowing a hardship discharge promotes bankruptcy's fresh start policy. Similarly, when the education obtained does enhance the debtor's earning potential but even that income is not sufficient to provide funds for repayment of the loans, granting a hardship discharge has the effect of converting the student loan into a scholarship, which enables the borrower to make increased contributions to society.

A. Can Debtor maintain a minimal standard of living while repaying the student loan debt?

ECMC does not seriously challenge satisfaction of the first element of the *Brunner* test.

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[16] *Polleys*, 356 F. 3d at 1306, *quoting* Report of the Comm'n on Bankr. Laws of the United States, H.R. Doc. No. 93-137, Pt. II § 4–506 (1973).

[17] *Id*.

As shown above, Debtor's cash flow at the time of the hearing was approximately $3,037 and her monthly expenses, without any payment of the student loan obligation, were approximately $3,195, or approximately $158 in excess of Debtor's monthly income. The Court notes that some expenses, such as clothing and entertainment, were below a minimal level. Debtor has no discretionary income.

All of the Debtor's expenses were satisfactorily explained. Debtor's expense of $400 per month for finance charges on payday loans,[18] although appearing excessive, is fully supported by the evidence and is consistent with the rates permitted in Kansas for payday loans. The Kansas Consumer Credit Code sets special finance charge ceilings for payday loans.[19] Such loans are a period of less than 30 days, and the parties must anticipate that the loan will be repaid in a single payment. If these conditions are met, a licensed lender may receive a finance charge of 10% on a loan in excess of

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[18] Payday loans have been described as follows:

> Payday loans are known by various names, including payday advances, deferred deposit notes, and a cash advance loans. To apply for a loan, a consumer usually needs to present a driver's license, pay stub, bank statement, telephone bill, and a checkbook. Payday lenders advertise that consumers can obtain, in minutes, payday loans without hassles or credit checks. Assuming a consumer qualifies for payday loan, the nontraditional lender makes a small cash advance (ranging from $50-$1000) to the consumer in exchange for the consumer's post-dated personal check written for the amount of the loan plus a fee. ... Because the lender holds the check until the consumer's next payday, the usual term of the loan is up to two weeks. The lender that attempts to cash the check unless the customer repays the loan in full and reclaims the post-dated check, pays a fee to "roll over" or extend the loan's due date for another two weeks, or, in states that prohibit rollovers, refinances the loan by paying a fee. Assuming the customer cannot repay the loan by its due date, and must roll over the loan, the customer pays a fee usually equal to the initial borrowing fee, further increasing the cost of the loan.

Creola Johnson, *Payday Loans: Shrewd Business or Predatory Lending?*, 87 Minn. L. Rev. 1, 9-10 (2002) (citations omitted).

[19] K.S.A. 2003 Supp. 16a-2-404.

$50 but not more than $100, 7% on a loan in excess of $100 but not more than $250, and 6% on a loan in excess of $250 and not greater than the maximum of $860, plus a five dollar administrative fee. For example, the maximum finance charge on a payday loan of $200 for two weeks is $19, which is approximately 245%. The annual charge for the same loan would be approximately $494, if the loan were rolled over when it became due every two weeks. Debtor testified that she was paying a $15 finance charge on a $100 loan. This finance charge, although excessive in the view of the Court, is consistent with the Kansas finance charge ceilings for payday loans. Having been cautioned by the Tenth Circuit not to impose its own values on the Debtor's life choices,[20] this Court recognizes the legitimacy of Debtor's finance charge expense.

Under the circumstances which existed at the time of trial, Debtor's expenses could not be reduced by $400, as would be required for her to make payment on the student loans. The Court finds the first *Brunner* element satisfied.

B. Is debtor's state of affairs likely to persist for a significant portion of the repayment period of the student loans?

The second *Brunner* element "requires that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans."[21] The Tenth Circuit in *Polleys* described application of this prong as follows:

> However, in applying this prong, courts need not require a "certainty of hopelessness." Instead, a realistic look must be made into debtor's circumstances and the debtor's ability to provide for adequate shelter, nutrition, health care, and the like. Importantly, "courts should base their estimation of the debtor's prospects on specific articulable facts, not unfounded optimism," and the inquiry into future circumstances should

[20] *Polleys*, 356 F. 3d at 1310.

[21] *Id.*

be limited to the foreseeable future, at most over the term of the loan.[22]

The Court finds that the evidence establishes that Debtor's state of affairs is likely to persist for a significant portion of the repayment period. It is unlikely that Debtor's income from her employment will increase in the foreseeable future. Debtor has been employed by the State of Kansas since the fall of 2001, and the only raises she has received are minimal cost of living adjustments. Debtor's employment is appropriate given her education and her handicap. There is no evidence that a promotion or a significant raise is likely. Debtor's profound deafness severely limits her employment options.

Without the approximately $900 per month assistance from the Church of Latter Day Saints, the Debtor would not be able to maintain a minimal standard of living, given the ongoing, significant medical expenses for herself and her son. The evidence does not establish a likelihood that this money will increase; rather, the evidence establishes that the Church could make a decision to stop the $900 per month assistance at any time. The assistance started in 2001, before Debtor filed for bankruptcy in November of 2002. The Church reviews the Debtor's finances regularly. Debtor does not receive a check; rather the money goes to pay directly for services for the benefit of the Debtor.

The evidence establishes that it is unlikely that Debtor's medical expenses will decrease in the future and an increase is likely. Both the Debtors and DJ's medical conditions are chronic. There is no evidence of a possibility of significant improvement; both Debtor's and TJ's medical problems have become more serious since filing. Debtor's co-payments increased from the time of filing to the time of trial, and there is no reason to suppose they will decrease in the future. Debtor's childcare costs

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[22] *Id*.

will probably not decrease as TJ enters middle school because he does not have the mental capacity or confidence to stay home by himself. Some of TJ's drugs have been provided as free samples, but it is unknown how long this situation will continue. Debtor's hearing dog is almost 10 years old, and within a few years Debtor will incur the additional cost of replacing the dog or otherwise acquiring similar assistance. Some of Debtor's other expenses appear low, indicating increases can be anticipated. Debtor's amended schedule J includes no funds for unanticipated expenses, which are certain to arise.

ECMC's position that the second element of the *Brunner* test is not satisfied is based upon speculation that Debtor will receive tax refunds for tax year 2004. ECMC did elicit testimony that as of the date of trial, Debtor had not prepared her 2004, tax returns but there was a possibility of Debtor's receipt of tax refunds during 2005 for tax year 2004 based upon her receipt of refunds totaling $1995 for tax year 2003. ECMC argues that it is likely that Debtor will receive tax refunds in 2005 and that these funds can be used to pay off the payday loans of $1478.50, thereby eliminating the monthly $400 expense she is currently paying as finance charges for these loans and allowing her to pay the student loans. This argument has appeal. The amount of the tax refunds for tax year 2003 was more than the principal of the payday loans. If those loans were paid in full, $400 currently in the Debtor's monthly budget would become available to pay other expenses.

However, the Court rejects ECMC's argument as a basis to find that second of the *Brunner* standard is not satisfied because of the uncertainty of the Debtor's continued receipt of approximately $900 per month assistance from the Church of Latter Day Saints. Even if the Debtor were to receive the tax refunds and pay the principal on the payday loans thereby eliminating a $400 per month expense, if this assistance were terminated Debtor's expenses would exceed her income by $500 more than they did at the time of trial. The Debtor's dependency upon the assistance from the Church of Latter Day Saints is strong evidence of the Debtor's present inability to maintain a minimal standard of living while repaying the student loans. The tenuousness of that income evidences Debtor's continued inability to pay the loans in the future. In several cases, courts have found a debtor's reliance upon income from parents to be a significant element in the finding of undue hardship.[23] For example, in *In re Speer*[24], the debtor's mother and stepfather were providing assistance with housing, transportation, and medical bills. The court, when finding the second element of the *Brunner* test satisfied, noted, "There is no guarantee that [debtor's] mother and stepfather will still have the ability to assist him in five years – they may have their own financial obligations to consider. And, needless to say, Mr. Spear's parents will not be here forever."[25] This Court finds the foregoing reasoning applicable to Debtor's reliance upon the Church's assistance.

Here there is no reasonable prospect that Debtor's employment income will increase, no guarantee that the assistance from the Church of Latter Day Saints will continue, no possibility that Debtor's handicap will improve, and no indication that Debtor's or TJ's medical conditions will improve. There is no indication that Debtor's expenses will be significantly reduced, unless ECMC's speculation regarding Debtor's receipt of tax refunds sufficient to pay off the payday loans comes to pass. The

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[23] *In re Speer*, 272 B.R. at 186; *Mayer v. Pennsylvania Higher Education Assistance Agency (In re Mayer)*, 198 B.R. 116 (Bankr. E.D. Pa. 1996) aff'd 210 B.R. 677 (E.D. Pa. 1997), aff'd 156 F. 3d 1225 (3rd Cir. 1998)*; Correll v. Union National Bank of Pittsburgh (In re Correll*), 105 B.R. 302 (Bankr. W.D. Pa. 1989); *Reilly v. United Student Aid Funds, Inc.(In re Reilly)*, 118 B.R 38 (Bankr. D.Md 1990); *Polleys*. 356 F. 3d at 1311.

[24] *In re Speer*, 272 B.R. at 196.

[25] *Id*.

Court declines to find such speculation a sufficient basis to conclude that the second prong of the *Brunner* test is not satisfied because of the uncertainty of Debtor's income from the Church. The Court holds that the second prong of the *Brunner* test is satisfied.

C. Good faith.

The third prong of the *Brunner* test requires the Court to evaluate the Debtor's good faith. The Tenth Circuit in *Polleys* defined the inquiry as follows:

> Finally, an inquiry into a debtor's good faith should focus on questions surrounding the legitimacy of the basis for seeking a discharge. For instance, a debtor who willfully contrives hardship in order to discharge student loans should be deemed to be acting in bad faith. Good faith, however, should not be used as a means for courts to impose their own values on a debtor's life choices.[26]

In this circuit, failure to make a payment on the student loan, standing alone, does not establish lack of good faith.[27] Good faith can be evidenced by the fact that the debtor did not immediately seek to discharge her student loan obligations when they became due and cooperation with the lenders.[28] Additional evidence of good faith is a showing that the debtor is "actively minimizing current household living expenses", is "maximizing personal and professional resources", and is not "attempting to abuse the student loan system by seeking to have her loans forgiven before embarking on a lucrative career".[29]

The evidence in this case is sufficient to establish the presence of good faith. Debtor did

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[27] *Polleys,* 356 F.3d at 1311.

[28] *Id.*

[29] *Id.*

not immediately seek to her discharge loans. When Debtor found she could not make her payments, she entered into a deferment agreement and then a consolidation agreement. Debtor's schedule F includes 10 medical bills, four credit card and bank charges , five utility charges, a veterinary bill, a personal loan from an individual, and an unsecured claim in a civil lawsuit, in addition to the student loan. Debtor's standard of living evidences that she is actively minimizing her expenses. Debtor has reached the maximum of her employment potential, given her severe handicap. Although the postgraduate education for which Debtor incurred a portion of her student loan obligation allowed her to increase her employment income above the minimum wage, her income simply is not sufficient to allow her to maintain a minimal standard of living and simultaneously repay the loans.

CONCLUSION.

For the foregoing reasons, the Court holds that Debtor is entitled to a hardship discharge of her student loan obligation, including all principal, interest, and other charges, pursuant to section 523(a)(8).

The foregoing constitutes Findings of Fact and Conclusions of Law under Rule7052 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 Federal Rule of Bankruptcy Procedure 9021 and Federal Rule of Civil Procedure 58.

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