IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:	)	
	)	
LISA DAWN JUNGHANS,	)	Case No. 01-41733-7
	)	
Debtor.	)	
_____	)	
	)	
LISA DAWN JUNGHANS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adversary No. 02-7006
	)	
WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM U.S. DEPARTMENT OF EDUCATION,	)	
	)	
Defendant.	)	
_____	)	

MEMORANDUM OF DECISION

This matter is before the Court on Plaintiff's Adversary Complaint (Doc. 1) seeking an order that the student loan debt owed to the Defendant is dischargeable because of undue hardship pursuant to 11 U.S.C. § 523(a)(8). After hearing testimony, reviewing trial exhibits and arguments of counsel, the Court is prepared to rule.

The Court has jurisdiction to hear this matter as it is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

I. FINDINGS OF FACT

The parties stipulated to numerous facts in the Pretrial Order (Doc. 27). In addition, Plaintiff Junghans testified at the trial in this matter. Upon reviewing the stipulations and exhibits, as well as the testimony of Junghans, the Court makes the following findings of fact:

A. Facts Concerning Junghans' Student Loan

1. Junghans attended Brown Mackie College in Salina, Kansas, for approximately two years, first studying accounting and then switching to a paralegal curriculum. She attended the total time required to complete the course of study, but she did not meet the requirements to graduate because she was unable to type at the required minimum speed.

2. In order to fund her education at Brown Mackie College, Junghans took out student loans in 1992. On January 28, 1997, she filed an application to consolidate student loans originally contracted for in 1992, agreeing to consolidate all loans with Defendant William D. Ford Federal Direct Loan Program.

3. On June 29, 1998, Junghans filed a "Direct Loan General Forbearance Request." In this request, Junghans sought and received a forbearance on her student loan which temporarily authorized her to stop making payments based on her economic hardship. This forbearance ended November 7, 1998.

4. Junghans has never made any payments on her 1992 student loans or her 1997 consolidation loan because most of the time she was solely supporting three children while working at minimum wage. During some of the time she was receiving public assistance, so she simply did not have adequate income to make any payments.

5. The debt balance as of February 5, 2002, including principal and interest, was $24,781.04.[1]

B. Facts Concerning Junghans' Financial Situation

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[1]The government's answer in this case indicated that $24,781.04 was, in fact, only the principal due on the note, with an additional $3,987.87 owed in interest as of January 31, 2002, for a total owing, over a year ago, of $28,768.91. The Exhibit attached to the government's answer indicated that interest was accruing at 6.79%.

6. Junghans was a 35 year old woman with a seventeen year old son, a fifteen year old daughter, and an eleven year old son when she filed her Chapter 7 case on July 31, 2001.

7. Vol. 67, No. 31 Federal Register, at 6932, Thursday, February 14, 2002, identifies "2002 Poverty Guidelines for the 48 Contiguous States and the District of Columbia" for a family of five to be $21,180.

8. Junghans has never applied for a paralegal position because the help-wanted advertisements for paralegals in the Junction City area where she resides require an associates degree or a minimum typing speed, neither of which she can satisfy. She has tried to obtain secretarial jobs, but she does not type fast enough, and in at least one instance, the job paid less than her current job.

9. Junghans' annual income over the past five years, as reflected in federal income tax returns from 1997 - 2001, was $14,103, $14,635, $16,669, $15,885, and $24,019, respectively.

10. Junghans is now employed full time at an Animal Hospital and earned $24,019 last year. She is the bookkeeper at this employment, and by virtue of her knowledge about the financial status of this company, she is very concerned whether she will continue to be employed, and at this salary, because of the company's financial problems. She expects no pay increases because of these financial problems.

11. She has looked into possible other employment due to her fear that she might lose her current job, but the only job she has found is in another city some distance from her home, and it only pays slightly more than she presently receives. Thus, her travel costs would outstrip any increase in pay. She has not applied for or received an offer of employment; she simply has looked because of the instability of her present employment.

12. Junghans was substantially and frequently emotionally and physically abused by her ex-husband. All her children were emotionally abused by witnessing this abuse. In addition, her oldest child was once physically abused by her ex-husband, and Junghans had to have her ex-husband arrested for this violence. Counseling has been recommended for her so she can better handle the ongoing effects of this past abuse, but lack of funds has prohibited her from obtaining needed counseling.

13. Junghans' oldest (18) son lives with her, and has a part-time job at a car wash paying $6.10 per hour. He does not help with any of the household expenses, but pays for his own clothes and food.

14. Junghans' oldest son was treated by Pawnee Mental Health for anger management for 3-4 years until Junghans' ex-husband lost his job and the health insurance paying for the treatment was terminated. Her son was previously on anti-depressant medication and received some therapy in an attempt to help him cope with the abuse he suffered as well as the abuse he witnessed against his mother, which lasted the entire time his father lived in the home and even after he was removed from the home.

15. Junghans' younger son suffers from and is currently under a physician's care for ADHD and receives prescription medication for that condition. The cost of that prescription is $35.00 per month. As part of his treatment, he too undergoes some psychotherapy with a school social worker.

16. Junghans' daughter was 12 or 13 when Junghans' 33-year-old live-in boyfriend began a sexual affair with the daughter. When Junghans learned of the affair, she forced him to move and sought his prosecution and conviction. The daughter blamed Junghans for causing the breakup with her "boyfriend," causing the daughter to move away from Junghans' house for some time.

17. For about six months, Junghans and her daughter participated in family counseling paid for through the Geary County District Court by Victims Assistance funds. Further counseling was recommended, because the daughter blamed and hated her mother for prosecuting her boyfriend, but Junghans cannot afford it.

18. Junghans' previous work experience includes bartending and secretarial work. She currently earns $11.00 per hour and is paid weekly.

19. At the time of filing the Complaint herein, Junghans was receiving $92.94 per week in child support from her ex-husband's unemployment insurance. A court order required $500.00 a month for child support, plus $112.00 per month for arrearages for a monthly total of $612.00. The child support arrearage at that time was $13,000.00 and is now $14,000.00, demonstrating that the ex-husband is not keeping current on child support. Currently, Junghans is receiving $360 per month in child support for two children, but that is of recent history only.

20. Junghans' ex-husband has a drug and alcohol problem and has difficulty holding a job. He has a history of being unable or unwilling to keep a job, and has a history of disappearing when she or the State locate him and garnish his wages. Last time he disappeared, it took over a year to locate him. Accordingly, child support is sporadic, at best, and she can never rely on its receipt.

21. Junghans is living with her children in a 1980's model single-wide, three bedroom trailer. The payment is approximately $278.00 per month to Conseco Finance, along with the monthly lot rent of $145.00, and monthly insurance of $27.00. Junghans is behind on these payments.

22. The electric bill runs from $280.00 to $325.00 during the summer with air conditioning. The plaintiff is behind on these payments as well. Gas and electric costs are approximately $310.00 to $375.00 during the winter months.

23. Junghans' monthly water bill runs from $68.22 to $90.00.

24. Junghans' basic telephone local bill runs $60.31.

25. Since the location where Junghans lives does not receive TV reception, she pays $58.00 a month for cable TV, which is the only entertainment expense she incurs.

26. Maintenance on the aging trailer house has included $42.00 for labor on the heater, and $60.00 to repair a rotted floor hole, but Junghans cannot afford to replace the entire floor as the carpenter recommended.

27. Junghans would install storm windows if she could afford them to reduce the high heating and air-conditioning bills, but she has no money to even pay her required monthly expenses.

28. Junghans' sixteen year old , unmarried daughter now has an infant son who lives with them. The infant is asthmatic and must have air conditioning during the hot months. Her daughter does not work, has dropped out of school, and Junghans is the sole support of her grandchild.

29. The amount spent on food for Junghans, her children and one grandchild is estimated to be approximately $650.00 per month. WIC provides formula for the grandchild but it does not last the entire month. The formula costs approximately $29.00 a can, which contributes to food costs.

30. Junghans spends approximately $40.00 per month for diapers, which also comes from the "food" budget.

31. Health Wave, a government-assisted health insurance program, covers a portion of the health care expenses for her grandchild, but Junghans has to pay for the remainder, which costs $120.00 per year.

32. The grandchild suffers from a reflux condition that has required calling an ambulance to Junghans' residence on more than one occasion. Junghans has not been able to pay for the expenses associated with the ambulance calls, and that bill has been turned over for collection.

33. Expenses of the hospital and prenatal medical attention for Junghans' daughter and grandson have not been paid, were not fully covered by insurance, and a collection agent is seeking repayment. The hospital has offered a payment plan, but the Plaintiff cannot afford the reduced payment plan for three separate unpaid medical bills of $408.91, $176.15, and $297.80. These are post-petition expenses not discharged by this bankruptcy.

34. Junghans is behind on several other post-petition bills, including utility and trailer payments.

35. Junghans has attempted to obtain assistance from Legal Aid to pursue the father of her grandchild for child support. However, since she is not the birth mother, and her daughter refuses to sign the necessary legal documents, she cannot obtain child support to assist with the grandchild's expenses.

It is unlikely she will be more successful in the future, since the father of her grandchild is unemployed and moves around, living with various friends.

36. Junghans has also been unable to obtain any financial support for her grandchild from the parents of the baby's father because no one knows where the paternal grandfather lives, and the baby's paternal grandmother just got out of prison.

37. Junghans has been diagnosed with clinical depression and has been prescribed mental health counseling, but, due to insufficient funds, including inability to afford health insurance for herself, she cannot receive that counseling. She also suffers from shingles, which she does not properly treat due to lack of funds.

38. Junghans has been prescribed antidepressants and has been told she will likely require medication the remainder of her life. She is unable to fill the prescriptions, however, because she lacks sufficient funds to pay for the medication.

39. Junghans has what have been diagnosed as stress headaches and has been prescribed medications to reduce their impact, but she no longer fills the prescriptions due to their cost. These unplanned medical problems are an example of an unbudgeted expense that she cannot pay, due in part to her inability to pay for health insurance.

40. Junghans' 1991 Toyota 4-Runner has 140,000 miles, and she cannot drive it other than locally because it is unsafe in its present condition. She relies on her son's car to drive any significant distance, including to the trial, and to deliver and retrieve the children from school and medical appointments.

41. Junghans cannot afford the estimated $600.00 that she has been told is the amount needed to fix the brakes on her vehicle.

42. Junghans has no insurance on her vehicle because she cannot afford insurance.

II. CONCLUSIONS OF LAW

The Bankruptcy Code creates a presumption that student loans are non-dischargeable in the absence of undue hardship to the debtor or the debtor's dependents. 11 U.S.C. § 523(a)(8). The debtor has the burden of proving that the student loan is dischargeable. *See In re Lindberg*, 170 B.R. 462 (Bankr. D. Kan. 1994).

Both parties agree that the Court should apply the test established by the District Court, and affirmed by the Second Circuit, in *Brunner v. New York State Higher Education Services Corp.*, 831 F.2d 395 (2d Cir. 1987), when deciding whether Junghans has met her burden of proving undue hardship. Under the *Brunner* test, Junghans must prove:

1) that she cannot maintain, based on current income and expenses, a "minimal" standard of living for herself and her dependents if forced to repay the loan;

2) 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 loan; and

3) that she has made good faith efforts to repay the loan.

See In re Innes, 284 B.R. 496, 502 (D. Kan. 2002). Junghans must prove all three elements, and failure to prove any one element terminates the Court's inquiry and results in a finding of no dischargeability. *Id.*

The first prong of the *Brunner* test requires Junghans to demonstrate "more than simply tight finances." *Id.* at 504. The Court requires more than temporary financial adversity, but typically stops short of utter hopelessness. *Id.* "A minimal standard of living includes what is minimally necessary to see that the needs of the debtor and [her] dependants are met for care, including food, shelter, clothing, and medical treatment." *Id.* Further, a court should also be hesitant to impose a spartan life on family members who don't owe the underlying student loan, particularly when those family members are children. *Windland v. United States Dept. Of Education (In re Windland)*, 201 B.R. 178, 182-83 (Bankr. N.D. Ohio 1996).

The second prong of the *Brunner* test requires "evidence not only of current inability to pay but also of additional, exceptional circumstances, strongly suggestive of continuing inability to repay over an

extended period of time. . . ." *Id*. at 509 (citing *Brunner*, 831 F.2d at 396). Debtor must show the Court such indicators as family dependents, medical problems, or limited education and job skills that would lead the Court to believe the she would be unable to repay the loan for several years. *Id.*

The third prong of the *Brunner* test requires the Court to determine if the Debtor has made a good faith effort to repay the loan "as measured by his [or] her efforts to obtain employment, maximize income and minimize expenses." *Id.* at 510. A finding of good faith is not precluded by the Plaintiff's failure to make a payment. *Id*. "Undue hardship encompasses a notion that the debtor may not willfully or negligently cause his own default, but rather his condition must result from factors beyond his control." *In re Faish*, 72 F.3d 298, 305 (3rd Cir. 1995).

III. ANALYSIS

The government admitted at the trial in this case that Junghans established the first prong of the *Brunner* test – that she cannot maintain even a minimal standard of living for herself and her dependents, based on current income and expenses, if forced to repay the loan now. However, the government contends that Junghans failed to establish either of the remaining two elements – that this state of affairs is likely to continue for a significant period of the repayment period or that she has made a good faith effort to repay the loan.

A. Junghans' current state of affairs will likely persist for a significant portion of the repayment period of the student loan.

The government argues that, with certain modifications to the student loan, including extending the repayment period 25 years and waiving any interest, Junghans' financial situation is likely to improve within a few years to a point where she will be able to repay the loan without any undue hardship. Under the

proposal offered by the government, Junghans' payments on the student loan would amount to approximately $50.00 per month, for now, an amount that would not even cover the annual interest that would otherwise accrue on this loan.

The Court agrees with the government that Junghans' financial situation might improve to some degree within the next few years as her children mature and hopefully become financially independent of her. The issue to be decided by the Court, however, is not whether her financial situation is likely to improve. Instead, the Court must determine whether her financial situation is likely to improve to a such a degree that she will be able to repay her student loan debt while also maintaining a minimal standard of living.

Junghans currently fails to purchase the following goods and services because she lacks the financial resources to pay for them:

1. Prescription drugs recommended by her health care practitioners – when she can afford to see them – to treat her clinical depression and stress headaches;
2. Insurance on her only automobile, despite the fact it is required by law;
3. Repairs to her twelve year old automobile, which already has 140,000 miles, including approximately $600 to repair the brakes that are currently in need of repair;
4. Mental health counseling to treat the clinical depression she suffers as a result of the abuse she has suffered in her life; and
5. Basic health insurance to cover her personal medical expenses, both routine and catastrophic.

Despite foregoing what this Court finds are necessities to maintain a minimal standard of living, Junghans is nevertheless currently behind on numerous bills and has already accumulated substantial debt less than fifteen months after discharge of her dischargeable debts in this bankruptcy. Junghans is currently facing collection actions based on her inability to pay medical bills associated with the birth of her grandchild.

Debtor's current financial situation causes her to live well below what the Court considers a "minimal" standard of living for herself and her dependants, causing her to forego necessities such as those listed above. The government did not seriously argue that any of her expenses were excessive, and the Court finds they are modest and reasonable. Any increase in income or reduction in expenses for this Debtor in the foreseeable future would allow her to possibly raise her standard of living closer to "minimal," not provide her with excess funds to repay her student loan. In fact, because Debtor also has no ability to meet unplanned expenses in her current budget, which expenses are inevitable given her aging trailer home, her non-working automobile, and her difficult family situation, it is more likely that any unanticipated increase in income would simply be offset by unbudgeted expenses of daily living.

Further, the uncontroverted evidence was that Junghans was very concerned about whether she would be able to retain her present job, which provides her, for the first time in the last several years, an income just over the poverty limits. Her concern is based on the financial condition of the business where she works. There was no evidence that it was likely her income would increase over time, and it is substantially less likely that someone her age, with her limited education, job training and experience, will see an increase in income that would in any way change the likelihood that she could repay this student loan without undue hardship.

The government's only real suggestion how this Debtor could reduce her expenses is to force her unemployed 16 year old daughter, who has been emotionally traumatized by her parent's violent marriage and who has shown signs of that emotional baggage by becoming sexually active at age 12, to leave and to take her child with her. Junghans testified that her unemployed daughter, who has dropped out of high school, would be unable and unwilling to care for her own baby, and there was no evidence to the contrary. The Court does not believe forcing this baby to became a ward of the state would be in anyone's best interest.

Furthermore, if Junghans was currently living at or even near a minimal standard of living, the government's argument would be more persuasive that at some distant time, the payment of this debt might not constitute an undue hardship, especially under certain government repayment programs. The Court finds that the possibility of a significant enough potential improvement in Junghans' financial situation to enable her to repay this student loan without it being an undue burden is insufficient to counter the Debtor's showing that "this state of affairs is likely to persist for a significant portion of the repayment period of the student loan."

The government suggests under certain repayment plans, Debtor might be allowed to pay only $50 per month. At that rate, a rate this Court finds the Debtor has no realistic ability to pay if she is to maintain a minimal standard of living for herself and her dependents in the foreseeable future, Debtor would not even be paying the accruing interest on the loan. This would leave a negatively amortized loan for the next 25 years, leaving her with an ever-increasing debt to pay, upon which it appears likely she would default. And even if the government would forgive the balance at the end of the repayment period, that would generate forgiveness of debt income when Debtor would be over 60 years of age.

The Court finds that the Debtor has produced sufficient evidence to establish that her inability to repay her loan while maintaining a minimal standard of living is likely to persist for a significant portion of the repayment period of the student loan. Despite her sincere desire to provide a better life for her children, her inability to earn the necessary income to support herself and her children - including her infant grandchild, makes it unrealistic that Debtor will be able to make even minimal payments on this loan within the foreseeable future. The Court finds that Junghans is unlikely to ever be able to repay this obligation, and it would impose an undue hardship, financially and emotionally, on her, her children and her grandchild to require her to do so. The Court does not condemn her decision, under all of these circumstances, to continue financially supporting her children and grandchild, and declines to condemn them to an even more spartan existence than they already endure.

B. Plaintiff has made a good faith effort to repay the loan.

The government also contends that Junghans has not made a good faith effort to repay her loan. In support of this argument, the government showed that she has failed to make any payments on her student loan. In addition, the government presented evidence that she has sought only one forbearance on her loan and only sought that relief after she was being pressured to pay the past-due debt.

As noted above, the third prong of the *Brunner* test requires the Court to determine if the Debtor has made a good faith effort to repay the loan "as measured by his or her efforts to obtain employment, maximize income and minimize expenses." *In re Innes*, 284 B.R. at 510. The Court can find good faith on the part of the debtor in the absence of any showing of bad faith. *See Wynn v. Missouri Coordinating Bd. of Educ. (In re Wynn)*, 270 B.R. 799, 803 (Bankr. S.D. Ga. 2001). "Courts have measured good

faith by examining various factors; the fact debtor has made no payments or has made some payments on the loan is not in and of itself dispositive." *In re Birrane*, 287 B.R. 490, 499 (9th Cir. B.A.P. 2002).

The Court finds that Junghans has made a good faith effort to repay the loan. She has consistently held a job and is clearly not careless in her spending. She has demonstrated that she has made all reasonable efforts to maximize her income while minimizing her expenses, as shown by her inability to repair rotted floors, repair an aging mobile home (including purchasing storm windows that might serve to reduce unlikely costs), repair an old vehicle to make it safer to drive, obtain insurance for that vehicle, and obtain necessary medical care, prescription drugs and health insurance for herself. The only evidence that could possibly show a lack of good faith is the fact that she failed to make any payments on the loan. However, it is clear to the Court that her failure to make any payments stems from a continuing financial inability to make the payments, rather than a lack of good faith. There is no showing of bad faith or of a lack of good faith under the extreme hardship facts in this case.

III. CONCLUSION

The Court finds that Junghans has met her burden of proving that repaying her student loan will constitute an undue hardship. Junghans' current financial situation prevents her from making the required payments – or any payment – and maintaining a minimal standard of living. The Court finds Junghans does not maintain a minimal standard of living even without any student loan repayment. The evidence shows that this situation is not likely to change in the foreseeable future and that her financial and family situation constitute extraordinary circumstances excusing repayment. In addition, Junghans has made a good faith effort to repay her loan, by attempting consolidation, but even this act did not help her come up with the

necessary funds to make even reduced payments. Therefore, the debt is dischargeable pursuant to 11 U.S.C. § 523(a)(8).

IT IS, THEREFORE, BY THIS COURT ORDERED that 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.

IT IS SO ORDERED this 15th day of May, 2003.

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JANICE MILLER KARLIN, BANKRUPTCY JUDGE
UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the Memorandum and Order and Judgment on Decision were deposited in the United States mail, postage prepaid on this _____ day of May, 2003, to the following:

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_____

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