

In the United States Bankruptcy Court

for the Northern District of Iowa

DIANE KRISTEN MELING

Bankruptcy No. 99-03008-W

Debtor(s).

Chapter 7

DIANE KRISTEN MELING

Adversary No. 00-9004-W

Plaintiff(s)

vs.

UNITED STATES OF AMERICA
DEPARTMENT OF EDUCATION et al
Defendant(s)

Appealed to B.A.P. on 04-18-2001

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[Affirmed](#) by U.S.D.C. on 01-22-2002

ORDER RE DEBTOR'S COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT

On March 7, 2001, the above-captioned matter came on for hearing on Debtor's Complaint to Determine Dischargeability of Debt. Debtor/Plaintiff Diane Kristin Meling appeared with her attorney Michael Dunbar. Assistant United States Attorney Larry Kudej and Legal Intern Matthew James appeared for Defendant U.S. Department of Education. The time for filing briefs has now passed and the matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I).

STATEMENT OF THE CASE

As a preliminary matter, it is noted that Cylinder State Bank, Waldorf College, University of Northern Iowa, Iowa College Student Aid Corporation and Iowa Student Loan Liquidity Corporation, the other Defendants named in the amended complaint, failed to file responsive pleadings. From the Certificate of Service, it does not appear that Cylinder State Bank was properly served. Since proper service is not shown, this decision does not affect the disposition of any student loan held by Cylinder State Bank. However, it appears that the remaining defendants were properly served. Therefore, this opinion is binding on the Department of Education as well as all remaining defendants, who failed to file answers except for Cylinder State Bank.

STATEMENT OF FACTS

Debtor Diane Meling seeks an undue hardship discharge of her student loan obligations. She is 28 years old and single with no dependants. She has a long and well documented history of mental illness. At the age of 17, while a junior in high school in Spencer, Iowa, she was hospitalized for

several weeks because of extreme depression. Debtor was subsequently diagnosed as having bipolar disorder. This is in common parlance referred to as manic depression.

Bipolar disorder is a chronic mental health disorder that is genetic in nature. Symptoms usually first appear in early adulthood and typically resurface throughout the person's lifetime. A person with bipolar disorder experiences dramatic swings in mood and behavior. During the depressed phase, the individual can have extreme feelings of low self worth and typically becomes detached from society. Conversely, during the manic phase of the illness, the individual experiences very poor judgment and has a tendency to become delusional as well as paranoid. The illness can be treated with medication. Such treatment, however, cannot always prevent a person from cycling into a manic or depressive phase.

The severity of the illness varies from person to person. Some patients with bipolar disorder live long, normal, and healthy lives with proper medication and psychiatric supervision, while others face constant bouts of illness and hospitalization. Bipolar disorder does not abate with time and the degree of illness typically remains constant throughout the person's lifetime. Debtor's prognosis is not the most favorable. She was hospitalized several times in early adulthood, takes three medications daily, and regularly sees a psychiatrist. Debtor's psychiatrist, Dr. Mary Sergento, stated that Debtor has trouble controlling her emotions even when she is not in a manic or depressive phase of her illness.

In the fall of 1991, after graduating from high school, Debtor attended Waldorf College, located in Forest City, Iowa, to pursue her aspiration of becoming a teacher. At the time, Debtor maintained a belief that her illness would not prevent her from realizing her goal. However, after one semester at Waldorf, she found that she could not successfully tolerate the stress involved with her education and was hospitalized for depression. She underwent electric shock treatment in an effort to stabilize her illness. She was forced to withdraw from her spring semester courses due to her prolonged hospitalization. Despite the treatment, Debtor withdrew from Waldorf in the fall of 1992.

During the fall of 1992, Debtor went to work and was eventually fired from several jobs. She testified that the positions, especially one at a local nursing home, made her overly tired. She could not keep pace with the demands of the work. In an effort to ease back into her education, Debtor enrolled in a computer class at Iowa Lakes Community College located in Emmetsburg, Iowa, in the spring of 1993.

After gaining significant course credit at Iowa Lakes, Debtor enrolled at the University of Northern Iowa in the spring of 1994. At that time, she elected to stop taking her medication. Not surprisingly, at the end of her fall semester at U.N.I., Debtor experienced another bout of extreme depression and was hospitalized and forced back onto medication. Once again, Debtor was compelled to withdraw from her courses due to her illness. Since Debtor experienced a high level of stress at the university level, she did not return to U.N.I. but chose to withdraw from classes and went back to Iowa Lakes to take classes part-time.

In the summer of 1996, Debtor enrolled at Hawkeye Community College in Waterloo, Iowa. Debtor found it easier to work part-time and attend school part-time. From 1994 to 1998, she attempted to work at several jobs, all of which paid near minimum wage, but found each one too stressful and demanding. Consequently, she never held a job longer than a few months.

Eventually, Debtor obtained her Associate of Arts degree from Hawkeye Community College. In the fall of 1998, believing she was prepared to take on the stress of big campus life, Debtor again enrolled at U.N.I. She planned to become a social worker and scheduled classes accordingly. Balancing part-

time school with part-time work, Debtor managed to receive decent grades during her first two semesters back at U.N.I.

Despite making significant progress at U.N.I., Debtor faced troubles outside of the classroom. While there, Debtor dated a man who she claims was manipulating her. Although most of her educational expenses were covered by grants due to her disability, Debtor's boyfriend allegedly coerced her into taking out student loans in her name to help him meet his own personal expenses and to pay off his own student loan obligations. Debtor also alleges that he is the reason that she faced growing credit card debt which, in turn, forced her to consider bankruptcy.

In the fall of 1999, Debtor states that she came to the realization that her boyfriend did not have her best interests at heart. She terminated their relationship but the damage had been done. Stress began to mount once more and as finals approached, Debtor was hospitalized for depression.

On November 15, 1999, Debtor filed for relief under Chapter 7. In her Answers to Interrogatories, Debtor states that the main reason for filing was to discharge her credit card debt, not her recently acquired student loan debt. However, after consultation with her attorney and her doctors, Debtor determined that discharge of her student loan debt may be a viable option.

Debtor's psychiatrist contends that Debtor will never be able to work more than part-time at a low-stress job. She will probably have to rely on Social Security benefits for the rest of her life. The hours she works must be flexible and she must have an employer who is tolerant of Debtor's needs and abilities. Fortunately, Debtor has recently received employment through a woman who belongs to Debtor's church. Debtor now works part-time at the Shirt Farm in Spencer, Iowa. The stress level at her workplace is relatively low and Debtor has managed to move out of her parents' house. Although she is living in an apartment by herself, she is not without supervision. The apartment building is run by the Sunshine Group, an organization that supervises mentally handicapped and mentally ill people.

At trial, Debtor stated she never intends to attend college again because the stress level has proven to be far too much for her to handle. Since beginning her new job and moving out of her parents' house, Debtor's illness has stabilized. However, any reasonable hope for greater prospects does not exist.

In her schedules, Debtor lists a total net monthly income of \$991.00, half of which is Social Security income. Her monthly expenses total \$1,172.00. Debtor's expenses rose after her bankruptcy filing because of her recent choice to move out of her parent's home.

In Debtor's Complaint, she lists the following student loan obligations owed to each creditor: Waldorf College from 1991 for \$1,000.00, Cylinder State Bank from 1994 for \$3,354.00, University of Northern Iowa from 1994 and 1996 for \$3,695.00 and \$5,500.00 respectively, and the U.S. Department of Education from 1998 and 1999 for \$22,560.00. Also, Iowa Student Loan Liquidity Corp. and Iowa Student Aid Commission are listed in the complaint as entities attempting to collect on a student loan debt.

DISCUSSION

Unless a debtor proves the "undue hardship" exception provided for in 11 U.S.C. § 523(a)(8) applies, student loan obligations are not dischargeable in bankruptcy. In re Scholl, Adv. No. 99-9190-C slip op. at 3 (Bankr. N.D. Iowa Jan. 30, 2001). The Eighth Circuit has adopted a "totality of the circumstances" test in determining whether undue hardship exists. In re Andresen, 232 B.R. 127, 137 (B.A.P. 8th Cir. 1999); In re Cline, 248 B.R. 347, 349 (B.A.P. 8th Cir. 2000). To apply the test, the

Court must focus on the debtor's current and future financial resources, necessary reasonable living expenses for the debtor and the debtor's dependents, and any other facts unique to the particular bankruptcy case. Cline, 248 B.R. at 349.

The test is open-ended and the Court has broad latitude to consider any evidence that is relevant to the debtor's situation. Andresen, 232 B.R. at 140. One court has set out a list of factors that may be relevant to certain situations. In re Morgan, 247 B.R. 776, 782 (Bankr. E.D. Ark. 2000) (listing nine factors). This list is non-exhaustive and the test must be applied on a case by case basis. See Scholl, slip op. at 4.

To establish undue hardship, the Court must be satisfied that repayment of the student loan is "hopeless." In re Roberson, 999 F.2d 1132, 1135 (7th Cir. 1993). Mere "garden variety" hardship will not suffice. In re Mathews, 166 B.R. 940, 943 (Bankr. D. Kan. 1994).

Debtor has established that her current monthly income is \$991. Debtor is virtually devoid of any marketable job skills and it is highly unlikely that her prospects for a higher paying job will improve anytime in the future. It is reasonable to conclude that she will never be able to work more than part-time due to her illness and will always require Social Security assistance. Furthermore, there is no showing that she is likely to receive any financial windfall in the future.

The Department of Education disputed several listed expenses as being excessive. In particular, it claimed that a \$100 monthly tithe to Debtor's church was unreasonable. Several courts have addressed the issue of tithing in the undue hardship context and found that such donations are per se unreasonable. See In re Ritchie, 254 B.R. 913, 919 (Bankr. D. Idaho 2000) (holding charitable donations are excluded as proper expense); In re McLeroy, 250 B.R. 872, 880 (N.D. Tex. 2000). This Court rejects the per se rule established in that line of cases. In Cline, 248 B.R. at 349, the Bankruptcy Appellate Panel for the Eighth Circuit, while reviewing an undue hardship appeal, upheld the lower court finding that a \$25 monthly tithing was "modest and reasonable under the circumstances."

In the instant case, Debtor is employed by a fellow church member who understands the impact that Debtor's illness has on her ability to work. But for this contact Debtor could be in a worse financial position. Although the tithing to her church did not begin until after bankruptcy was filed, the Court finds that Debtor is a deeply religious person and such a contribution is reasonable under the circumstances. As to the remaining disputed expenses, the Court finds that Debtor's listed living expenses are necessary and reasonable.

Considering the additional facts and circumstances unique to Debtor's situation, the Court finds a number of factors necessitate a finding of undue hardship. Debtor is hampered with a serious mental illness. Her condition is likely to persist throughout her entire lifetime. Although this Court agrees that bipolar disorder standing by itself is insufficient for a finding of undue hardship, Debtor has demonstrated that her condition is severely debilitating. In re Plotkin, 164 B.R. 623, 624 (Bankr. W.D. Ark. 1994). Debtor does not face mere financial difficulty; rather, her disorder prevents her from entering the workforce with any marketable skills or abilities.

This Court also finds that Debtor has presented credible evidence and has acted with the requisite amount of good faith. Normally, student loan debtors must at least attempt to repay the loans before seeking an "undue hardship" discharge. However, this case is exceptional due to the severity of Debtor's illness. Further, the Court is convinced that Debtor's poor judgment in acquiring the most recent loans is attributable to Debtor's disorder and is not an indicia of bad faith.

Debtor cannot be forced into a payment plan when an undue hardship exists. Debtor has demonstrated that she is maintaining a minimum standard of living and currently has an income just above the poverty line for single person. See Office of the Secretary, Department of Health and Human Services, Annual Update of the HHS Poverty Guidelines, 66 F.R. 10695, 10695 (February 16, 2001). Any reduction in her disposable income would drop her below poverty levels. Taking into account the size of the debt, even minimal payments would be stretched out for many years. Allowing such a result would just exacerbate Debtor's already precarious situation.

CONCLUSION

Evaluating the record as a whole, the Court finds that Debtor has carried her burden of proving that an undue hardship exists under § 523(a)(8), despite the strong legislative policy against discharge such loans. Certainly, it is hopeless that Debtor would ever be able to repay her student loan obligations. Debtor does not merely face "garden variety" hardship but a life-long debilitating mental illness which severely impairs her ability to pay back her student loans.

WHEREFORE, Debtor's student loan obligations owed to Defendants U.S. Department of Education, the University of Northern Iowa, Waldorf College, Iowa Student Loan Liquidity Corp., and Iowa College Student Aid Corp. create an undue hardship pursuant to § 523(a)(8).

FURTHER, Debtor's student loan debts owed to the above-named defendants are discharged.

FURTHER, since proper service was not shown by Debtor, the interests in the student loans held by Cylinder State Bank are not affected by this decision.

SO ORDERED this 9th day of April, 2001.

Paul J. Kilburg
Chief Bankruptcy Judge

In the United States District Court

for the Northern District of Iowa

Waterloo Division

United States
Department of Education
Plaintiff(s)

No. C01-2027 MJM

vs.

Diane Kristin Meling
Defendant(s)

ORDER

The matter before the court is whether Diane Kristin Meling (hereinafter Debtor) is entitled to an undue hardship discharge of her student loan obligations pursuant to 11 U.S.C. § 523(a)(8). The

Bankruptcy Court concluded that Debtor carried the burden of proving undue hardship as required under 11 U.S.C. § 523(a)(8), and discharged her student loans⁽¹⁾. The United States Department of Education appealed the decision⁽²⁾. For the following reasons, the court affirms the ruling of the Bankruptcy Court.

STANDARD OF REVIEW

The court reviews de novo the bankruptcy court's conclusions of law. Fed. R. Bank. P. 8013; *In re Martin*, 140 F.3d 806, 807 (8th Cir. 1998); *In re Commercial Millwright Serv. Corp.*, 245 B.R. 603, 606 (N.D. Iowa 2000). The bankruptcy court's findings of fact are reviewed for clear error. *In re Usery*, 123 F.3d 1089, 1093 (8th Cir. 1997). "The determination that requiring a debtor to repay student loans would constitute an undue hardship is a factual finding and is reversible only for clear error." *Cline v. Illinois Student Loan Assistance Assoc. (In re Cline)*, 248 B.R. 347, 351 (B.A.P. 8th Cir. 2000). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been committed." *In re Hatcher*, 218 B.R. 441, 445-46 (B.A.P. 8th Cir. 1998) (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573 (1985)). "To be clearly erroneous, a decision must strike [the reviewing court] as more than just maybe or probably wrong; it must. . . strike [the court] as wrong with the force of a five-week-old, unrefrigerated dead fish." *Ford v. Student Loan Guarantee Found. of Arkansas (In re Ford)*, 269 B.R. 673, 674 (B.A.P. 8th Cir. 2001) (quoting *In re Papio Keno Club, Inc.*, 262 F.3d 725, 728 (8th Cir. 2001)). The reviewing court may affirm the bankruptcy court on any evidence supported by the record. *In re Hatcher*, 218 B.R. at 446.

FACTS

The Bankruptcy Court made an extensive finding of fact after a thorough review of the record. Following is a summation of the relevant facts. Debtor is 28 years old, single, with no dependents. She is currently employed as a retail clerk with the Shirt Farm in Spencer, Iowa, working 20-25 hours per week at \$6.50 per hour. Debtor has been diagnosed with bipolar disorder. She was hospitalized for several weeks for severe depression in high school and has battled the illness ever since.

Bipolar disorder is a chronic mental health disorder. Individuals are predisposed to having the disorder, that is, it is genetic in nature. Typically, symptoms appear in early adulthood and recur throughout the individual's lifetime. Symptoms include dramatic mood swings ranging from being very depressed to being manic. Erratic, or inappropriate behavior, usually occurs during the manic phase, while the depressed phase is usually accompanied by feelings of low self-worth and reclusive behavior. Individuals suffering from bipolar disorder can be treated with medication, however, such treatment does not always prevent an individual from experiencing the phases of the disorder.

Debtor receives \$491.00 per month from Social Security on account of her mental illness. Her gross wages and Social Security benefit total \$991.00 per month in income. The prognosis for Debtor to go beyond this level is not encouraging. Debtor has been hospitalized several times for her illness. She takes three medications daily and sees a psychiatrist on a regular basis.

Debtor began her college career in 1991 at Waldorf College with the intention of becoming a teacher. However, during her first semester, the Debtor suffered depression and was once again hospitalized. She received electric shock treatment to stabilize her condition. In the spring semester, the Debtor withdrew from course work due to her prolonged hospitalization. In the fall of 1992, Debtor withdrew entirely from Waldorf College.

After withdrawing from Waldorf College, Debtor took employment in a series of different jobs, all of which ended in her termination. Debtor stated the jobs made her overly tired and that she was unable to meet the demands of the jobs. In the spring of 1993, Debtor enrolled at Iowa Lakes Community College for training in the childcare field. She took only one class.

In the spring of 1994, Debtor enrolled at the University of Northern Iowa. At the same time, Debtor stopped taking her medication. By the end of the fall semester of 1994, Debtor had spiraled into extreme depression and was once again hospitalized. At this point, Debtor had earned nine credit hours with a 1.81 grade point average. She withdrew from university classes in both the spring 1995 and fall 1996 semesters.

Debtor attempted to pursue her education again at Hawkeye Community College in Waterloo, Iowa. Debtor enrolled and attended school on a part-time basis and also worked on a part-time basis in minimum wage jobs. Again, she found the employment situation too burdensome and was unable to hold a job for more than a few months. However, she did receive an Associate of Arts degree from Hawkeye Community College in the summer of 1998.

Following the completion of her studies at Hawkeye Community College, Debtor again enrolled at the University of Northern Iowa in the fall of 1998. While working part-time in the fall semester, she earned six credit hours. At the same time, Debtor began dating a man who she claims was manipulating her. Debtor contends her boyfriend pressured her into taking out additional loans in her name for his personal expenses and to pay off his obligations. In addition, Debtor alleges he is the reason for the growing credit card debt which she faced and that ultimately forced her to consider bankruptcy.

In the fall of 1999, Debtor ended her relationship with this man, stopped attending classes, and was once again hospitalized. Debtor filed her Chapter 7 petition on November 15, 1999. The Debtor contends her main reason for filing the Chapter 7 petition was to discharge her credit card debt.

In the proceeding below, Debtor's psychiatrist stated that Debtor will not be able to work more than a part-time, low stress job. Further, Debtor will likely have to rely on Social Security benefits for the duration of her life. Debtor must be employed in a flexible environment by an employer who is understanding of Debtor's needs and abilities. Apparently, Debtor has found such a situation at the Shirt Farm in Spencer, Iowa. Her employer is a friend from her church and is sympathetic to her situation. For a while, Debtor was living in her parents' home. Currently, she is living in an apartment run by the Sunshine Group, an organization that supervises mentally ill and mentally handicapped individuals.

The Department of Education loaned Debtor a total of \$22,560.00 in 1998 and 1999. Debtor listed this amount on her complaint and seeks a discharge of this obligation. The Department of Education received \$1,568.26 in payments from Debtor.

The court finds no error in the Bankruptcy Court's exhaustive factual finding. The Department of Education encourages this court to adopt the Sixth Circuit's standard of review announced in *In re Chessman*, 25 F.3d 356, 359 (6th Cir. 1994). The court declines the Department's invitation and follows the standard of review embraced in the Eighth Circuit: "A bankruptcy court's determination of whether excepting a student loan from discharge will impose undue hardship is a factual determination and is reversible only for clear error." *Long v. Educational Credit Management Corp.* (*In re Long*), No. 01-6042MN, ___ B.R. ___ (B.A.P. 8th Cir. 2001).

ANALYSIS

Student loans may be discharged for undue hardship. 11 U.S.C. § 523(a)(8). The debtor bears the burden of proof by a preponderance of the evidence to prove an undue hardship. *In re Ford*, 269 B.R. at 675. The test employed in the Eighth Circuit is a "totality of the circumstances" test. Under this test, the court should examine the debtor's position in terms of: 1) the debtor's past, current and reasonably reliable future financial resources; 2) the debtor's and his or her dependents' reasonable necessary living expenses; and 3) any other relevant facts and circumstances in the particular bankruptcy case. *Andrews v. South Dakota Student Loan Assistance Corp. (In re Andrews)*, 661 F.2d 702, 704 (8th Cir. 1981); *Andresen v. Nebraska Student Loan Program (In re Andresen)*, 232 B.R. 127, 139 (B.A.P. 8th Cir. 1999) ("We interpret *Andrews* to require a totality of the circumstances inquiry with special attention to the debtor's current and future financial resources, the debtor's necessary reasonable living expenses . . . , and any other circumstances unique to the particular bankruptcy case."); *In re Ford*, 269 B.R. at 675 ("In *In re Andresen*, ... we adopted the 'totality of the circumstances test enunciated by the Eighth Circuit Court of Appeals in *Andrews v. South Dakota Student Loan Assistance Corp.* . . . "). "While defining undue hardship is a question of law, . . . the determination of whether excepting a student loan from discharge will result in undue hardship for the debtor and the debtor's dependents is a question of fact" *In re Andresen*, 232 B.R. at 128 n.2.

In the case at bar, the totality of the circumstances support the Bankruptcy Court's conclusion that repayment of Debtor's student loans would create an undue hardship on Debtor. The Department of Education argues the court must address each loan individually because the Debtor has not consolidated her loans. There is support for such a position. See *In re Andresen*, 232 B.R. at 137 ("We hold that the bankruptcy court's application of § 523(a)(8) to each of [debtor's] education loans separately was not only allowed, it was required."). However, in terms of the total student debt and restructuring, the outcome is less certain: "While it appears plain to [the court] that there is no authority in the Code or elsewhere for partial discharge or other revision of a debtor's individual educational loan obligations, that question is not before [the court] and [the court] therefore decline[s] to decide it." *Id.* The Bankruptcy Court did not make a separate determination on each loan, but rather discharged all of Debtor's student loans. The Bankruptcy Court's failure to make such a determination does not change this court's determination that the debt is dischargeable under the undue hardship provision of the Bankruptcy Code. "The court's authority under § 523 is to determine dischargeability. This is an all-or-nothing proposition.... The language of 11 U.S.C. § 523(a)(8) does not authorize the court to fashion a repayment schedule." *Hawkins v. Buena Vista Coll. (In re Hawkins)*, 187 B.R. 294, 300 (Bankr. N.D. Iowa 1995). Debtor's condition and prospects for improvement are not encouraging. Debtor still faces significant hurdles as chronicled by the Bankruptcy Court. This court finds no error in the Bankruptcy Court's conclusion that "[a]ny reduction in her disposable income would drop her below poverty levels. Taking into account the size of the debt, even minimal payments would be stretched out for many years. Allowing such a result would just exacerbate Debtor's already precarious situation." Turning to the Eighth Circuit's test for dischargeability, the court will now examine Debtors situation in light of the totality of the circumstances.

1. Debtor's past, current and reasonably reliable future financial resources.

The Bankruptcy Court found that

Debtor is virtually devoid of any marketable job skills and it is highly unlikely that her prospects for a higher paying job will improve anytime in the future. It is reasonable to conclude that she will never be able to work more than part-time due to her illness and will always require Social Security assistance. Furthermore, there is no showing that she is likely to receive any financial windfall in the future.

In light of Debtor's illness, the severity of it, and the impact it has on her lifestyle, the Bankruptcy Court's determination of Debtor's financial prospects finds ample support in the record and lacks any indication of clear error. The court agrees with the conclusion below that the "Debtor has demonstrated that her condition is severely debilitating. . . . Debtor does not face mere financial difficulty; rather, her disorder prevents her from entering the workforce with any marketable skills or abilities."

In making this determination, it is true the court will inevitably engage in some speculation. "[T]he Eighth Circuit has recognized that 'the bankruptcy court's determination of undue hardship will necessarily involve a certain amount of speculation about the debtor's financial circumstances.'" *In re Ford*, 269 B.R. at 675 (quoting *In re Andrews*, 661 F.2d at 704-05). However, the Department of Education's speculation that Debtor can earn up to \$700.00 on top of her Social Security income is not supported by the evidence. The Bankruptcy Court found substantial evidence indicating Debtor's ability to earn a living is seriously compromised by her illness. It is not only appropriate, but necessary to take Debtor's condition into consideration when evaluating her financial prospects: "The Eighth Circuit Court of Appeals has observed that it is appropriate to consider a debtor's disease or disability as a factor in the determination of undue hardship because such a situation often requires expensive treatment and may effect an individual's ability to work." *In re Ford*, 269 B.R. at 675 (citation omitted). Any economic utility derived from the loans is also compromised by Debtor's condition: "While the debtor may have received some benefit from the loan in the past and may receive some benefit in the future, any benefit is outweighed by the severe difficulty of her medical condition which will, by all accounts, in the long-term, deprive her of the means to employ the educational benefit." *In re Plotkin*, 164 B.R. 623, 625 (Bankr. W.D. Ark. 1994). In the Bankruptcy Court's findings, Debtor's employment and education experience, and the effects of her illness, dispelled the belief that Debtor's financial prospects would improve. The court finds no clear error in that conclusion.

2. Debtor's reasonable necessary living expenses.

Debtor lists expenses of \$1,172.00. Debtor's expenses increased after filing her bankruptcy petition because she moved out of her parents' home into the apartment supervised by the Sunshine Group. The Department of Education contests Debtor's expenditures on her automobile (\$282.00), charity (\$100.00), clothing (\$75.00), furniture (\$100.00), cable (\$20.00), and recreation (\$30.00). The Department of Education suggests that Debtor's listed expenses are unreasonable and Debtor is indulging in luxuries at the expense of her creditors. The Department of Education further contends the Bankruptcy Court's finding of fact was clearly erroneous because some of Debtor's expenses would dissipate as she continued to make payments, e.g., her furniture. The court agrees with the Bankruptcy Court's determination that Debtor's listed expenses are reasonable⁽³⁾. "[G]oing over [debtor's] expenses dollar for dollar in order to find every possible way to boost a surplus is not reasonable given that the overall total remains firmly minimal." *In re Cline*, 248 B.R. at 351.

Significant in the Bankruptcy Court's conclusion to discharge Debtor's student loans is the impact of the illness on Debtor's ability to work. Debtor has found stable employment from an employer, also a fellow church member, who understands and is able to accommodate the effects of the illness. Debtor met this employer through her church to which she tithes \$100.00 per month, an amount the Department of Education challenges as unreasonable. The Bankruptcy Court further concluded that "[b]ut for this contact, Debtor could be in a worse financial position." The Bankruptcy Court concluded "that Debtor is a deeply religious person and such a contribution is reasonable under the circumstances. As to the remaining disputed expenses, the Court finds that Debtor's listed living

expenses are necessary and reasonable." This court does not find error in the Bankruptcy Court's determination.

3. Other relevant facts and circumstances in Debtor's case.

This court agrees with the Bankruptcy Court's assessment of the impact of Debtor's illness. While the illness was discussed above in the context of its impact on Debtor's financial prospects and relation to reasonable living expenses, the court believes it is appropriate to consider Debtor's illness in this component of the totality of the circumstances test. *See In re Andrews*, 661 F.2d 702, 704-05 (8th Cir. 1981) ("Further, in our opinion the bankruptcy court properly considered the debtor's disease as a factor in the determination of undue hardship."). The physical and financial implications of a serious illness are well documented in case authority:

Serious illness all too often requires expensive treatment and medication. Serious illness may affect an individual's ability to work. To some extent, as argued by the creditor, the expenses associated with a serious illness may be covered by health insurance. . . . The bankruptcy court should also consider any additional information about the debtor's present employment status and employment prospects....

In re Andrews, 661 F.2d at 705.

Finally, the court must evaluate the record as a whole to determine whether Debtor has carried the burden of proving that undue hardship exists. *Andresen*, 232 B.R. at 140. Present inability to repay the loan may not suffice as a hardship. *Roberson*, 999 F.2d 1132, 1135 (7th Cir. 1993). Instead, there must be a 'certainty of hopelessness' that the loans will be repaid. 'Undue hardship requires the debtor to show that the debtor is suffering from truly severe, even uniquely difficult circumstances, not merely severe financial difficulty.' *In re Ogren*, No. 9501211 KC slip op. at 6 (Bankr. N.D. Iowa Oct. 10, 1996). Ultimately, the Court must make its judgment in light of the strong legislative policy against allowing the discharge of student loans in bankruptcy.' *Id.*

In re Scholl, 259 B.R. 345, 348 (Bankr. N.D. Iowa 2001). The Bankruptcy Court concluded that Debtor's condition is severely debilitating and has a profound effect on her ability to work. *See In re Cline*, 248 B.R. at 351 ("The court did not let [debtor] win an undue hardship discharge because she voluntarily limited her earning capacity. Instead, the court found that the [debtor] was *unable* to maintain a job that paid a higher income.") (emphasis in original). In addition, the Bankruptcy Court concluded that Debtor acted with the requisite amount of good faith, attributing "Debtor's poor judgment in acquiring the most recent loans" to the severity of Debtors illness. This court finds support for that conclusion in the record. The discharge of Debtor's student loans was warranted under the Eighth Circuit's totality of the circumstances pronouncement.

CONCLUSION

After a thorough review of the record and the Bankruptcy Court's findings of fact and conclusions of law, and considering the Department of Education's arguments, this court concludes the Bankruptcy Court's decision is well supported by the evidence and applicable law. Accordingly, the Bankruptcy Court's judgment to discharge the debt is affirmed.

ORDER

For the foregoing reasons, the decision of the bankruptcy court is
AFFIRMED.

Done and so ordered this 22nd day of January, 2001.

Michael J. Melloy,
United States District Judge for the
Northern District of Iowa

cc: Clerk, U.S. Bankruptcy Court
Cedar Rapids, IA

In the United States District Court
for the Northern District of Iowa
Eastern Division

United States
Department of Education
Plaintiff(s)

No. C01-2027 MJM

vs.

Diane Kristin Meling
Defendant(s)

ORDER

DECISION BY COURT: This action came on for decision before the Court. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT plaintiff take nothing and the decision of the
U.S. Bankruptcy Court to discharge the debt
is Affirmed.

Dated: January 22, 2002.

JAMES D. HODGES. JR.
Clerk

(By) Deputy Clerk

1. The Honorable Paul J. Kilburg, Chief Judge, United States Bankruptcy Court for the Northern District of Iowa, presiding. This Court has jurisdiction to hear this appeal pursuant to 28 U.S.C. § 158 (a)(1).

2. In addition to the Department of Education, student loans were also discharged as to Waldorf College, University of Northern Iowa, Iowa College Student Aid Corporation and Iowa Student Loan Liquidity Corporation, all defendants in the court below. However, only the Department of Education is appealing the Bankruptcy Court's decision. Defendant Cylinder State Bank was not properly served and thus is not bound by the decision of the Bankruptcy Court.

3. The Department of Education's argument that certain expenses listed by Debtor are extravagant and unnecessary does not persuade this court. Debtor lives modestly in apartments supervised by the Sunshine Group. Her expenses, in light of the totality of the circumstances, are prudent. Reviewing Debtor's expenses as a whole, the court cannot say the Bankruptcy Court clearly erred in not finding her expenses unreasonable. *See In re Long*, No. 01-6042MN, ___ B.R. at ___.