

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
ROGER E. PRITCHARD and) Bankruptcy Case No. 05-36252
MICHELLE E. PRITCHARD,)
)
Debtors.)
)
MICHELLE E. PRITCHARD,)
)
Plaintiff,)
)
vs.) Adversary No. 05-3300
)
UNITED STATES OF AMERICA,)
DEPARTMENT OF EDUCATION,)
)
Defendant.)

OPINION

The issue before the Court in this adversary case is whether requiring the Debtor to repay her student loans would impose an undue hardship on the Debtor so as to render the debts nondischargeable pursuant to 11 U.S.C. § 523(a)(8). Debtor appeared and testified at the trial on April 3, 2006.

The facts are not in dispute. The Debtor borrowed \$2,625 in 1990, and \$3,940 in 1991, to attend school. The amounts due currently on the two loans are \$6,263.24 (1990) and \$9,018.53 (1991). No payments have been made on either loan.

On January 18, 2006, the Debtor filed, with the United States Department of Education, a Loan Discharge Application asserting that she had a Total and Permanent disability. On February 8, 2006, she was notified by the U. S. Department of Education that her Application had been accepted. The program lasts three years, and, upon successful completion, the loans will be discharged. During the three year period, she is not required to make payments and no interest accrues.

The Seventh Circuit Court of Appeals addressed the issue in Matter of Roberson, 999 F.2d 1132 (7th Cir. 1993), when it adopted the test set forth by the Second Circuit in Brunner v. New York State Higher Education Services Corp., 831 F.2d 395 (2nd Cir. 1987). The Brunner test is as follows:

First, the Debtor cannot maintain, based upon current income and expenses, a minimal standard of living for herself and her dependents if forced to repay the loan;

Second, additional circumstances exist indicating that the state of affairs is likely to persist for a significant portion of the repayment period; and,

Finally, the Debtor has made a good faith effort at repayment.

In this case, the Debtor made no payments on either loan, and there was no evidence that she made an effort to make such payments. Therefore, the Debtor's Complaint to Determine Dischargeability must be denied. The Debtor has, however, been accepted into a program that would result in the loans being discharged. The Government representative stated that there is every indication that the Debtor will complete the program.

This Opinion is to serve as findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure. See written Order.

ENTERED: April 19, 2006.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge

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ORDER

For the reasons set forth in the Opinion entered this 19th day of April 2006;

IT IS HEREBY ORDERED that Michelle E. Pritchard's debt to the United States Department of Education be and is hereby determined to be nondischargeable pursuant to 11 U.S.C. § 523(a)(8).

ENTERED: April 19, 2006.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge

