IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

IN RE: BELINDA WAYMAN,	**CASE NO.: 3:03-bk-15156E**
Debtor	**CHAPTER 7**
BELINDA WAYMAN	**PLAINTIFF**
V.	**3:03-ap-1234**
STUDENT LOAN GUARANTEE FOUNDATION OF ARKANSAS	**DEFENDANT**

AMENDED JUDGMENT

Now before the court is a Complaint to Determine Dischargeability filed by the Debtor against Student Loan Guarantee Foundation of Arkansas (the "**Defendant**"). The Debtor seeks to discharge her student loan debt based on undue hardship under 11 U.S.C. § 523(a)(8). A trial was held on July 7, 2004, at which Warren E. Dupwe appeared on behalf of the Debtor, who was also present, and Connie M. Meskimen appeared on behalf of the Defendant. At trial, the Court heard testimony from the Debtor and received documentary exhibits. Upon consideration of the trial testimony, documentary evidence and post-trial briefs, the Court orally ruled on August 4, 2004, making the following findings of fact and conclusions of law in accordance with Rule 7052. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I), and the Court has jurisdiction to enter a final judgment in this case.

Although the Court recognizes Ms. Wayman's financial, physical and mental burdens, the Court cannot discharge her student loan under these facts and circumstances. In order to discharge a student loan debt, the Court must examine the totality of the circumstances. "Simply put, if the debtor's reasonable future financial resources will sufficiently cover payment of the student loan

debt – while still allowing for a minimal standard of living – the debt may not be discharged." *See In re Long*, 322 F.3d 549, 554-555 (8th Cir. 2003). The Debtor failed to prove she could not sustain a minimal standard of living if required to pay $70.95 per month under the Income Contingent Repayment plan as described in the parties' joint stipulations.

Although the Debtor did prove that her financial situation is bleak, there is room in her budget for the minimal amount necessary to make payments on her student loans. Specifically, I have considered Debtor's expenses as set forth in her Schedule J and revised those that changed based on her testimony. Through this process, her rent increased to $319 per month, and the cost of her cable increased to $52 per month. Her child care expenses should average out to about $120 per month assuming 12 weeks (which is the approximate length of summer) at $70 per week, and 40 weeks at $15 per week. Accordingly, I left the $156 allotted for day care, personal hygiene and haircuts. I find that both the cable expense of $52 and the recreational expenses of $125 are unnecessary for a minimal standard of living, and accordingly strike those from the Debtor's budget. Leaving all other expenses as reported on schedule J (even her clothing budget of $75 a month, which she testified was high), Debtor's monthly expenses would be $1,294. Based on her pay stub submitted into evidence along with her monthly child support of $242, her monthly take-home income is $1,469.76 (that's $566.66 x 26 pay periods divided by 12 months plus $242). Accordingly, she has approximately $176 of disposable income with which she can pay the Defendant $70.95.

Finally, I did not find Debtor's fear of possible garnishment, or her mental distress caused by the possibility of garnishment, sufficient to warrant a hardship discharge. Although it was not proven that the debt itself or her fears directly caused any of Debtor's health problems, it was clear

that fear of garnishment without notice caused the Debtor substantial anxiety. However, garnishment is an option the collection agency can pursue if, after notice (such as the one put into evidence), Debtor does not begin a payment plan. *See* 20 U.S.C. § 1095a (West 2004). The parties' Joint Stipulation reveals that a payment of $70 a month will be accepted and as explained, Debtor can pay that amount and still maintain a minimal lifestyle. Additionally, if Debtor returns to school, she will not have to pay the debt while enrolled. After 25 years, the remaining debt will be discharged, and if she becomes disabled, either permanently or temporarily, the student loan debt will be discharged.

In sum, given the current state of the law, the debt cannot be discharged, and accordingly, **JUDGMENT IS ENTERED IN FAVOR OF DEFENDANT**.

Audrey R Evans

HONORABLE AUDREY R. EVANS
UNITED STATES BANKRUPTCY JUDGE

DATE: August 19, 2004

cc: Mr. Warren E. Dupwe, attorney for Debtor/Plaintiff
Mr. Connie M. Meskimen, attorney for Defendant
Mr. A. Jan Thomas, Jr., Chapter 7 Trustee
U.S. Trustee