



training in November 1989 and received a truck driving license valid through June 9, 1994. She was employed briefly in that occupation. She began work as a certified nurse technician in January 1990 and returned to school to study nursing in November 1990. At Debtor's request, the 1987 and 1989 notes were consolidated at \$10,267.36 in March 1991. The first payment on the consolidated loan was due December 13, 1991. She received some forbearance that resulted in a new first payment date of December 13, 1991. Debtor defaulted on the consolidated note so Defendant Tennessee Student Assistance Corporation (TSAC) paid the lender as Debtor's guarantor. Debtor owes TSAC \$12,787.89 plus accruing interest on the 1987 and 1989 consolidated loan.

Debtor borrowed an additional \$2,625.00 under a guaranteed loan in 1991 for continued nurses training. She received her license as a practical nurse. The first payment on the 1991 loan was due April 1, 1993. She made \$353.08 in payments in 1993 before she defaulted on the 1991 note. TSAC was scheduled to pay the 1991 lender \$2,434.75 on March 17, 1994. The total debt due TSAC is \$15,222.64, plus interest and costs.

Debtor seeks a hardship discharge of these student loans. She testified that she cannot repay the debts because her husband is permanently and totally disabled, she is now temporarily disabled and receiving workers compensation, they have two young children, ages 9 and 11, and the family is moving back to Tennessee to be nearer to family members who need assistance. She says even when she is employed full-time as a licensed practical nurse, she does

not make enough money to meet all living expenses. Although Debtor is licensed as a practical nurse in Tennessee, she did not present any evidence on her employability in that state or what her potential income there would be after the family moves. Further, there was no evidence of what Debtor's family's expenses would be in Tennessee.

The family's income for 1993, including Social Security benefits, was \$24,695.39. They reported annual expenses of \$20,604.00 when they filed their Chapter 7 petition. Debtor's income potential as a licensed practical nurse is limited (approximately \$9.00 to \$15.00 per hour in Rapid City).

## II.

The hardship student loan dischargeability statute, 11 U.S.C. § 523(a)(8)(B), provides:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--

(8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless--

(B) excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents[.]

"[U]ndue hardship" is not defined by the Bankruptcy Code. However, answers to three questions are sought by many courts faced with this issue: First, can the debtor and his dependents maintain a

minimal standard of living, based on current income and expenditures, if the debtor is required to repay the student loans? Second, is the debtor's poor financial condition likely to persist for a significant portion of the time during which the student loan is to be repaid? Third, has the debtor made a good faith effort to repay the student loans? *The Education Resources institute, Inc., v. Law*, Civ. No. 93-4196, slip op. (D.S.D. May 18, 1994) (citing *Brunner v. New York State Higher Education Services Corp.*, 831 F.2d 395, 396 (2nd Cir. 1987); *Wardlow v. Great Lakes Higher Education Corp. (In re Wardlow)*, 167 B.R. 148, 151 (Bankr. W.D. Mo. 1993); see *Bethune v. Student Loan Guarantee Foundation of Arkansas (In re Bethune)*, 165 B.R. 258 (Bankr. E.D. Ark. 1994). The burden of proof is on the debtor to show that circumstances warrant a discharge of his student loan debt. *In re Roberson*, 999 F.2d 1132, 1137 (7th Cir. 1993).

### III.

When the three-part *Brunner* test is applied, is it clear that Debtor's circumstances at the time of the trial did not permit her to repay her student loan debts without jeopardizing her family's minimal standard of living. The family's impending move to Tennessee and Debtor's lack of full-time employment produced a bleak, short-term financial picture.

Second, the Court does not find that Debtor has failed to make a good faith effort to repay her loans. Debtor did make some payments on her student loans in 1993 while she was fully employed. Although she was employed as a truck driver only for a short time

after receiving her training, that occupation did not work out for her and her family and she sought retraining as an LPN. Further, since becoming an LPN, Debtor moved from Tennessee to western South Dakota in search of better employment opportunities. Now, a family situation apparently requires their return to Tennessee.

Debtor's showing that her poor financial condition is likely to persist for a significant portion of the time during which the student loan is to be repaid, however, was insufficient. The Court was not presented with any evidence that Debtor cannot seek and obtain employment in Tennessee. There was no evidence that her wages in Tennessee will not permit her to repay her loans. There was no showing at all on what the family's expenses in Tennessee would be. Moreover, as stated in *Roberson*,

[E]ducational loans are different from most loans. They are made without business considerations, without security, without cosigners, and rely . . . for repayment solely on the debtor's future increased income resulting from education. In this sense, the loan is viewed as a mortgage on the debtor's future.

*Roberson*, 999 F.2d at 1135-36 (citing H.R.Rep. No. 595, 95th Cong., 1st Sess. 133 (1977))(quoted in *Law*, slip op. at 8). Therefore, since Debtor has not shown that her undue hardship will continue during the loans' scheduled repayment term, the Court must deny Debtor's request for a hardship discharge *at this time*. If circumstances change, Debtor again may seek a determination of undue hardship. See *Andrews v. South Dakota Student Loan Assistance Corp. (In re Andrews)*, 661 F.2d 702,705. n.5 (8th Cir. 1981). Such changes may include a long-term inability for her to work outside the home, receipt of inadequate income to meet

necessary expenses and repay the loan, or increased necessary expenses for the family. She will be required to show not only a current inability to pay the loans but also show "additional, exceptional circumstances, strongly suggestive of continuing inability to repay over an extended time[.]" *Brunner*, 831 F.2d at 396 (quoted in *Law*, slip op. at 8).

While the Court is sympathetic to Debtor's current plight, the Court's only options under § 523(a)(8)(B) are to grant or deny a discharge of Debtor's student loan debt; the Court cannot fashion a "reasonable" amount that Debtor should repay. Consequently, TSAC and Debtor should work cooperatively to explore all administrative options for a deferral, forbearance, or cancellation of her loans that are permitted by the laws and rules governing her guaranteed loans. It is the Court's hope that some common ground is found so that future litigation -- an expensive proposition for all -- is avoided.

An order will be entered denying the relief requested by Debtor without prejudice to Debtor again seeking relief under § 523(a)(8)(B) if circumstances warrant.

Dated this \_\_\_\_ day of July, 1994.

BY THE COURT:

\_\_\_\_\_  
Irvin N. Hoyt  
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By \_\_\_\_\_

(SEAL) Deputy Clerk

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
Western Division

In Re: )  
 )  
 ) Bankr. Case No. 93-50257  
 )  
 ) Adversary Case No. 93-5017  
 )  
 MICHAEL EUGENE DEAN and )  
 ANNA JEAN DEAN )  
 fka Anna Jean Law )  
 )  
 ) Chapter 7  
 )  
 Debtors. )  
 )  
 )  
 )  
 ANNA JEAN DEAN )  
 )  
 ) ORDERING DENYING HARDSHIP  
 Plaintiff, )  
 ) DISCHARGE OF  
 vs. )  
 ) STUDENT LOAN DEBTS  
 )  
 )  
 TENNESSEE STUDENT ASSISTANCE )  
 CORP., SALLIE MAE LOAN )  
 SERVICING CENTER, and )  
 COLLECTION TECHNOLOGY, INC. )  
 )  
 )  
 Defendants. )

In compliance with and recognition of the Memorandum of Decision Re: Hardship Discharge of Student Loan Debts entered this day,

IT IS HEREBY ORDERED that a hardship discharge of the student loan debts owed by Plaintiff Anna J. Dean to Defendant Tennessee Student Assistance Corporation is DENIED WITHOUT PREJUDICE.

So ordered this \_\_\_\_ day of July, 1994.

BY THE COURT:

\_\_\_\_\_  
Irvin N. Hoyt  
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK



By \_\_\_\_\_  
Deputy Clerk

(SEAL)