

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: Chapter 7
Laura L. Bollman, BKY 3-94-1809
Debtor.

Laura L. Bollman,
Plaintiff,

v. ADV 3-94-

090

United States Department of Education,
Defendant. ORDER FOR JUDGMENT

This matter came on for trial of the dischargeability of Debtor's student loans pursuant to 11 U.S.C. Section 523(a)(8)(B). Appearances were noted on the record. Based upon the testimony, exhibits received at trial, and upon all the records and files herein, the Court makes this ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.

In July, 1990, Laura Bollman obtained two government guaranteed student loans, in the total amount of \$6625.00, to finance her education at St. Mary's School of Practical Nursing in Rochester, Minnesota. Ms. Bollman, who was then 24 years old, had a high school education. Prior to her enrollment at St. Mary's, Ms. Bollman had received no job skill training beyond that required for basic service positions; and, her employment had been limited to minimum wage positions. She hoped to become a licensed practical nurse.

As part of the nursing curriculum, Ms. Bollman was enrolled in a behavioral sciences course, which was designed to educate students in dealing with patients who experience psychological and emotional problems that result from various forms of abuse. The course severely traumatized her, resulting in clinical depression; prescription medicine abuse and eventual overdose; and, in suicidal tendencies.

Ms. Bollman was eventually admitted to Riverside Medical Center, in its suicide unit. She was later transferred to Riverside's Stress & Depression Unit, where she remained for She still takes prescription medication. She continues to receive psychological counseling at the Mayo Clinic in Rochester, Minnesota; and, she participates in various substance abuse recovery programs.

Ms. Bollman could not resume her nursing studies at St. Mary's, following her stay at Riverside. She is unable to consider a career in nursing, or in other areas of the health field, due to her continuing fragile psychological and emotional condition. She is presently employed as a servicing clerk at a truck center, where she makes \$7.50 an hour. Her net income averages \$223.00 per week, \$1300 per month(1), or \$12,000 per year. Her history reveals that neither her personal well-being, nor her financial situation, is likely to significantly improve in the foreseeable future.

Ms. Bollman was sexually abused by her father at age fifteen. Apparently, the abuse was substantial, and it continued for some time. Later, she became involved in a physically and psychologically abusive marriage that ended in divorce. Since then, she had at least one other abusive relationship. Presently, Ms. Bollman is living in the same household as her former husband, with her six year old son, who was born during their marriage. She contributes an amount of rent that offsets the child support he is obligated to pay.

He does not otherwise contribute to the support of either Ms. Bollman or the child. Apparently, he has assured his noncontribution by taking extraordinary measures, such as partitioning the refrigerator and policing his food.

Ms. Bollman continues to suffer various other forms of psychological abuse from this individual, yet she is unable to extricate herself and the child from either him or the environment. She removed her son from the residence on one occasion and moved to Washington State, only to return after being traced there by her former husband and threatened by him with kidnapping charges.

She also remains dependent on her own parental family, where the continuing pattern of physical and psychological abuse originated. In the recent past, Ms. Bollman habitually incurred monthly telephone bills exceeding \$100, largely for calls made to her parents. When pressed for payment of the student loans, she sought refinancing by participation of her father as cosigner on loans that she applied for. He is an obligor on an existing loan taken to purchase her present automobile.

Ms. Bollman's financial circumstances, like her other personal circumstances, are not good. Ms. Bollman supports herself and her son on \$1300 per month. Her monthly expenses presently exceed her disposable income by as much as \$200 per month.(2)

They are:

rent	265.00
home maint.	20.00
car ins.	64.00
trans.	185.00
food	200.00
clothing	25.00
laundry	10.00
gas, heat	40.00
electricity	30.00
telephone	41.00
medical	25.00
car payment	233.10
atty's fees	50.00

day care 303.00
newspaper/mag. 15.00
total expenses 1505.00

Ms. Bollman has never made any payments on her student loans. She once sought a deferment of payments, but was unsuccessful. She applied for consumer loans from two banks to refinance the obligations, but was turned down. She actively sought better employment opportunities in her own geographic area, including government positions in Dodge County, and hotel employment in Rochester. And, she applied for higher paying positions with her present employer. None of these efforts was successful.

When Ms. Bollman filed for bankruptcy on April 21, 1994, her total indebtedness was scheduled at \$40,712, of which \$30,712 was unsecured. At the time of filing, her outstanding balance on the student loans was \$8,361.96, including principal and interest. She seeks discharge of the loans under the "hardship" clause of 11 U.S.C. Section 523(a)(8).

II.

11 U.S.C. Section 523(a)(8)(B) provides, in pertinent part:

(a) A discharge under Section 727 . . . 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 [.]

The Bankruptcy Code does not define "undue hardship". In this jurisdiction, the Court has adopted a three-prong "progressive" test to evaluate the facts in each case where the issue is raised, to determine whether there exists an "undue hardship." See: In re: Frech, 62 B.R. 235 (Bankr. D. Minn. 1986); and, Cossette v. Higher Education Assistance Foundation, 41 B.R. 684 (Bankr. D. Minn. 1984). Under the "progressive" test, the three prongs are commonly referred to as the "mechanical," the "good faith," and the "policy" tests.

Burden of proof on all three lies with the debtor who seeks the hardship discharge.

In applying the "mechanical" test, the Court considers a variety of factors in a debtor's vocational profile, including: current income and employment; future employment and income prospects; educational level and work skills; health; family support responsibilities; and, the practical marketability of his or her work skills. A debtor, who seeks discharge under the statute, bears the burden of showing that income will not be sufficient to maintain herself and her dependents beyond the minimum or "poverty level" standard of living for the foreseeable future, if there exists a continuing obligation to make student loan payments.

Here, the Debtor has met her burden of proof with respect

to the "mechanical" test. Ms. Bollman seemingly has struggled desperately to attain the minimal level of subsistence she now has for herself and her son. She has been with her present employer for nearly two years, and receives only \$7.50 per hour for a weekly net income of \$233.00. According to her schedules, she was paid a net income of \$12,054.56 in 1993, and had received only \$5,665.02 through April, 1994, prior to the filing of her petition. There is little likelihood of advancement with this company, due to her lack of educational and vocational experience and training. Other prospects available to her in her local area also appear quite limited, and are not likely to result in wages of much more than she now receives.

Ms. Bollman has obviously suffered for many years from one abusive relationship after another. And, she remains locked in dependency upon the very individuals who have abused, and who continue to abuse, her the most. This unfortunate state of affairs is not conducive to the emotional healing, or to the development of self worth and self confidence, necessary for significant improvement in either her personal well-being or her financial circumstances. She has no ability, now or in the foreseeable future, to repay these loans through enhanced income.

In applying the "good faith" test, income and expenses are examined to determine whether a debtor is actively minimizing current living expenses while maximizing earning potential. Ms. Bollman has also met her burden regarding this test. She has been employed steadily, subsequent to leaving the Riverside Hospital, and has attempted to secure higher paying positions. Her expenses are not unreasonable, under the circumstances, yet she struggles to maintain a minimum standard of living for herself and her son.

While Ms. Bollman has not made any payments on the student loans, she has made serious good faith efforts to deal with these obligations, short of seeking their discharge. In addition to seeking better paying employment, she has sought deferral and refinancing. Failure to make payments does not prevent a finding of good faith where a debtor never had the opportunity, or the resources, to make payments. Cossette, at 692; citing, *In re Birden*, 17 B.R. 891 (Bankr. E.D. Pa. 1982).

The "policy" test, the third prong of the analysis, requires a determination whether a discharge of a student loan obligation would constitute abuse of the bankruptcy process.

The analysis involves consideration of: (1) the relative magnitude of a debtor's educational loan obligation as a component of total debt structure; and, (2) the personal, professional, and financial benefit that the debtor has received, or will likely receive, from the education financed by the loans in question. Here again, the Debtor has met her burden.

Ms. Bollman's total scheduled debt is \$40,712.05. Her student loans do not dominate her debt structure. The loans consist of approximately 20% of her total debt, and only 27% of her unsecured debt.

Regarding the second part of the analysis, it is clear that she has not benefitted, directly or indirectly, from her studies at St. Mary's. Ms. Bollman did not complete the course of studies, nor did she receive a degree. And, she is

unable to pursue further education or employment in nursing, due to her psychological and emotional condition.

III.

Ms. Bollman has met her burden with respect to each of the three prongs of the "Progressive" test adopted in *In re Cossette*. Requiring repayment of her student loans would result in an "undue hardship" on her and her 6 year old son. She has no present ability to pay these loans, or reasonable likelihood of ability to pay them in the foreseeable future. Ms. Bollman is the type of person, with the kind of unfortunate continuing circumstances, for whom the statute provides the relief of discharge.

Accordingly, IT IS HEREBY ORDERED: Laura L. Bollman's student loans owing to the United States Department of Education in the total amount of \$8,361.96, are discharged pursuant to 11 U.S.C. (a)(8)(B) and 11 U.S.C. Section 727. LET JUDGMENT BE ENTERED ACCORDINGLY:

January 30, 1995

By The Court:

Dennis D. O'Brien
Chief United States

Bankruptcy Judge

(1) This amount includes \$275.00 per month that Ms. Bollman receives from her former husband for child support.

(2) Apparently, Ms. Bollman's father contributes to her monthly car payment.