IT IS ORDERED as set forth below:

Date: October 10, 2008

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:	:	
	:	
MINNETTE R. GORDON,	:	BANKRUPTCY CASE NUMBER
	:	**07-68049-MGD**
Debtor.	:	
	:	
MINNETTE R. GORDON,	:	ADVERSARY CASE NUMBER
	:	**07-09049-MGD**
Plaintiff,	:	
v.	:	CHAPTER 7
	:	
UNITED STATES DEPARTMENT OF EDUCATION,	:	
	:	
Defendant.	:	

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DETERMINING DEBT DISCHARGEABLE

The above-styled adversary proceeding is before the Court on Defendant United States Department of Education's ("Defendant") Motion for Summary Judgment. (Docket No. 30). Debtor, Minnette R. Gordon ("Debtor") filed a Response to Defendant's Request for Summary

Judgment on July 14, 2008. (Docket No. 31). The issue before the Court on summary judgment is whether Debtor's student loans are non-dischargeable pursuant to 11 U.S.C § 523(a)(8). For the reasons set forth herein, Defendant's Motion for Summary Judgment is **DENIED**. The undisputed facts establish that repayment of Debtor's loans to Defendant would impose an undue hardship on Debtor and, therefore, Debtor's debt to Defendant is determined to be dischargeable.

I. FACTS

The material facts are undisputed. These facts are set forth in Defendant's Statement of Undisputed Facts in Support of Government's Motion for Summary Judgment ("Statement") (Docket No. 30, Attachment No. 1) and in Debtor's deposition ("Deposition") (Docket No. 34).[1]

The undisputed material facts in the record are as follows: Debtor filed her Chapter 7 bankruptcy case on May 23, 2007, and on September 19, 2007, instituted this adversary proceeding against Defendant, seeking to discharge her student loan debt pursuant to 11 U.S.C. § 523(a)(8). On December 4, 2007, Debtor received a Chapter 7 discharge of eligible debts. (Bankruptcy Case No. 07-68049-MGD, Docket No. 22).

According to her deposition testimony, Debtor is 62 years old and has limited education. Debtor is a high school graduate, with one year of community college education and one year of hair stylist training. (Statement, ¶¶ 4–6). Debtor did not receive a college degree. (Deposition, 43). Debtor has been licensed as a hair stylist in Georgia, but that license has lapsed. (Statement, ¶ 7). Recently, in 2004, Debtor studied business computer applications for one year

[1] All of the evidence in this case was provided by Debtor, aside from a single proof of claim Defendant filed in Debtor's underlying bankruptcy case.

(Statement, ¶ 8) in an attempt to increase her job opportunities. (Deposition, 19).

Debtor has a varied employment record.[2] Prior to moving to Georgia thirty years ago, Debtor worked full-time as an insurance sales person in St. Louis. (Deposition, 31). Upon moving to Georgia, Debtor worked full-time for three years as a hair products sales person, for two years as a full-time hair stylist with a single salon, and then ten to twelve years as an independent contractor styling hair full-time in various salons. (Deposition, 13–15). During her years as an independent contractor, Debtor struggled financially due to the high costs of renting booth space and buying supplies.[3] (Deposition, 16–17). Sometime around September, 2001, as a result of the poor economy, Debtor took a full-time job with Regis Hair Salon, where she thought the salon's name would bring better business. (Deposition, 16). Unfortunately for Debtor, business was no better there and, after a year to eighteen months, Debtor left Regis to work as a stylist at J. C. Penney. (Deposition, 16–17). During the two years Debtor worked at J. C. Penney, she was only scheduled for twenty to thirty hours per week, at the rate of seven dollars an hour. (Deposition, 18–19).

Debtor's work at J. C. Penney marked the end of her career as a hair stylist. In 2004, Debtor attended school and completed her one year of training in business computer applications. (Deposition, 19). Debtor believed that computer training would permit her to find a job where

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[2] Debtor reported difficulty remembering the specifics of many of her jobs, including precise dates of employment. The Court here provides a general overview of the information Debtor could recall.

[3] This is supported by Debtor's first bankruptcy case, which she filed on March 10, 1999. Debtor received a discharge in that case on July 7, 1999. (Bankruptcy Case No. 99-63935-MHM, Docket No. 10). Based on Debtor's account of her work history, her 1999 bankruptcy would have been within the years she worked as an independent contractor.

she could work sitting down and with better benefits. (Deposition, 19). Debtor's motivation was back and foot pain from her years of standing as a stylist. (Deposition, 19). At one point in her career, Debtor received treatment for a herniated disc. (Deposition, 40). While Debtor is generally in good health, Debtor's unchallenged testimony is that she still experiences back pain. (Deposition, 23, 28, 40–41).

Since completing her computer training, Debtor has sought work and gone on interviews, but has not found a steady job using her new skills. (Deposition, 20–21). Debtor believes that her interviews have gone well, but that she is not being hired as a result of her age and her limited experience in the field. (Deposition, 20–21, 28). Debtor spent two years working in non-surgical hair replacement until she was terminated, then worked as a customer service representative for a telemarketing company until October, 2007. (Deposition, 21, 24–26). Debtor now works with a temporary employment agency, where she has been assigned to work mostly at Spelman College as an administrative assistant and a receptionist. (Statement, ¶ 13; Deposition, 26). Although Debtor has applied for job openings at Spelman, she has not been hired there. (Deposition, 28). Debtor reports that she has applied to work for additional temporary employment agencies, but that even temporary assignments have been difficult to get. (Deposition, 29).

Debtor "is not living a lavish life style," according to the Defendant's Memorandum in Support of Government's Motion for Summary Judgment ("Memo"). (Memo, 5). Debtor has recently moved to a larger apartment with slightly higher rent, but she did so to be closer to family and only after learning that the rent at her previous apartment would be increased. (Deposition, 37). Due to Debtor's tight budget, she does not eat out and finds entertainment

from watching television and playing with her grandchildren. (Deposition, 51–52). Debtor currently does not have health insurance. (Deposition, 41). Debtor has not had health insurance for at least the past two years and has not had a physical exam in the same time. (Deposition, 41). Debtor does get annual gynecological exams because she attends a clinic with a sliding scale fee system. (Deposition, 41–42). Debtor does not own real property and does not own a car. (Deposition, 48–49). Debtor does not own stocks, bonds, or mutual funds. (Deposition, 51). Debtor does not have an IRA or a money market account. (Deposition, 52). Debtor does not have a savings account or even a bank account. (Deposition, 48). Debtor does not have a 401K or any form of retirement account. (Deposition, 48). As a result of her policy lapsing when she could not pay for it, Debtor does not have life insurance. (Deposition, 52).

Debtor's income for the year of 2008 consists of social security, unemployment compensation, and wages from temporary assignments. (Memo, 5). As a result of Debtor's limited income over the past year, she applied for and began receiving Social Security Retirement benefits in May, 2008. (Deposition, 77). Debtor's 2008 income, as of the date of her deposition, was $746 per month from social security, $3,584 in wages for the five months from January, 2008, through June 4, 2008, and a total expected amount of unemployment benefits of $1,683. (Deposition, 77–78 and Exh. 12). Debtor reported her unemployment benefits would expire within a few weeks of her deposition. (Deposition, 78). Thus, based on Debtor's deposition testimony, her current income should consist of $746 monthly from social security and, if her temporary assignments prove consistent,[4] an average of $716.80 per month in wages, for a total

[4] The Court recognizes that Debtor's wages may fluctuate from month to month due to her temporary employee status. For instance, Debtor testified that she has been out of work for as long as a month at a time, even while working with the temp agency. (Deposition, 27).

of $1462.80 per month and $17,553.60 annually. Debtor is divorced and has no dependants. (Deposition, 7, 35).

Debtor listed the following monthly expenses in her bankruptcy schedules:

Rent Payment	$ 585
Telephone	$ 106
Utilities	$ 208
Food	$ 175
Transportation	$ 80
Charitable Contributions	$ 40
Renter's Insurance	$ 28
Total:	$1222

However, in her deposition, Plaintiff provided the following current monthly expenses:

Rent Payment	$ 700
Telephone and Internet	$ 95
Cable Television	$ 25
Utilities	$ 70
Updated Total:[5]	$1213

Finally, in Debtor's Response to Defendant's Request for Summary Judgment, Debtor reported that she no longer receives cable services, that her most recent electric bill was $159, and that the cost of food was increasing. The Court cannot help but find that this is an incomplete picture of Debtor's actual expenses. For instance, Debtor has not reported any costs associated with clothing, laundry, personal hygiene, or household supplies.[6] With Debtor's limited expenses reported and the Court's estimate of her average monthly income, Debtor would

[5] This total includes the updated expenses as well as Debtor's previously reported expenses for food, charitable contributions, transportation, and renter's insurance, which were not addressed in her deposition.

[6] In addition to common sense dictating that Debtor actually does have these expenses, Debtor also mentioned such expenses in her Response to Defendant's Motion for Summary Judgment, though she did not specify how much she actually spends.

have little, if any, funds left over each month.

Debtor's student loan debt consists largely, if not entirely, of parent loans incurred to support her daughters' college educations. (Statement, ¶¶ 29–34). Debtor has obtained a total of seven student loans. (Statement, ¶¶ 29–34). Debtor's first loans were a Federal Family Education Loan ("FFEL") Parent Plus loan and a Supplemental Loan for Students ("SLS") loan, which were both taken out on March 22, 1988, to finance her daughter Rayann's education at Morris Brown College.[7] (Statement, ¶¶ 29–30). Those loans were for $2,000 each. (Statements, ¶¶ 29 –30). Debtor's third loan was a Stafford Subsidized loan for $2,625, taken out on May 9, 1988. (Statement, ¶ 31). Debtor's fourth loan was a SLS loan for $4,000, taken out on September 16, 1988. (Statement, ¶ 31). On February 17, 1989, Debtor took out her fifth loan, which was a Federal Perkins loan for $1,065. (Statement, ¶ 31). On October 11, 1990, Debtor consolidated the Stafford loan, the SLS loan from May 9, 1988, and the Federal Perkins loans, into a FFEL Consolidated loan.[8] (Statement, ¶ 31). Debtor's final two loans, which were for the benefit of her daughter Natalie at Xavier College, have both been either paid or cancelled.[9]

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[7] Debtor's daughter Rayann ultimately did not complete a degree at Morris Brown College. (Deposition, 46).

[8] Debtor stated that she was unsure whether the consolidated loan included her own loans for hair school. (Deposition, 58). This seems implausible. Debtor moved to Georgia and began her career as a stylist when one of her daughters was five years old. (Deposition, 12). The loans included in Debtor's consolidated loan were all originally taken out between 1988 and 1990. Based on loans for Debtor's daughters, they both attended college in the late 1980s and early 1990s. If Debtor began styling hair when her daughters were under the age of ten, it is unlikely that she took out student loans for hair school within the years that her daughters were attending college. Thus, Debtor's consolidated loan probably does not include loans for Debtor's own education.

[9] The only documentation of these loans is Debtor's printouts from the National Student Loans Data System on the internet. The printouts show the loans' status as "cancelled" with $0

(Statement, ¶¶ 33–34).

According to documentation provided by Debtor, her student loan liability as of March 8, 2008, was $18,138 in outstanding principal plus $12,888 in outstanding interest. (Statement, Attachment 6). Thus, her total student loan liability on that date was $31,206.[10] Debtor does not have a record of how much she has paid toward these loans over the years, nor has her loan provider given her a statement of payments they received. (Deposition, 59). Debtor last spoke to her loan provider the year before her bankruptcy, when she called to discuss her repayment options. (Deposition, 60–61). Debtor reports that she was not offered repayment options during that call and that no one returned any of her future calls. (Deposition, 61).

It is Debtor's undisputed testimony that she has made payments on her student loans.[11] (Deposition, 59). It is further undisputed that she has not been able to afford payments for the past five years. (Deposition, 60). As a result of that inability, Debtor's last voluntary student loan payment was sometime between six and ten years ago. (Deposition, 59–60). Debtor has nonetheless contributed payments to her student loans recently, in the form of withheld tax returns. (Statement, ¶ 35 and Attachment 12).

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of outstanding principal or interest. (Statement, Attachments 6 and 9–10).

[10] In Debtor's underlying bankruptcy case (Bankruptcy Case No. 07-68049-MGD), the Defendant filed a proof of claim showing only a judgment for $4,416.19 plus interest at 6.197 percent, which totaled $7,433.69 as of October 19, 2007. This is the only evidence of a possible interest rate for Debtor's student loans. No bar date for the filing of proofs of claim was ever established. Thus, the claim filed by Defendant is not evidence of all liabilities to Defendant.

[11] This testimony is supported by the fact that Debtor's consolidated loan was for $7,460, while the sum of the original loans to be consolidated was $7,690. (Statement, ¶ 31). Additionally, Debtor previously took out student loans for her own college education and has paid those loans. (Deposition, 43).

II. STANDARD APPLICABLE TO MOTIONS FOR SUMMARY JUDGMENT

Rule 56(c) of the Federal Rules of Civil Procedure, applicable herein by Rule 7056 of the Federal Rules of Bankruptcy Procedure, provides that summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *See also, Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Maniccia v. Brown*, 171 F.3d 1364, 1367 (11th Cir. 1999). In reviewing a motion for summary judgment, the court must view the record and all inferences therefrom in a light most favorable to the non-moving party. *See WSB-TV v. Lee*, 842 F.2d 1266, 1270 (11th Cir. 1988). "The party seeking summary judgment bears the initial burden to demonstrate to the [trial] court the basis for its motion for summary judgment and identify those portions of the pleadings, depositions, answers to interrogatories, and admissions which it believes show an absence of any genuine issue of material fact . . .. If the movant successfully discharges its burden, the burden then shifts to the non-movant to establish, by going beyond the pleadings, that there exist genuine issues of material facts." *Hairston v. Gainesville Sun Publ'g Co.*, 9 F.3d 913, 918 (11th Cir. 1993), *reh'g denied*, 16 F.3d 1233 (11th Cir. 1994). The non-movant may not simply rest on his pleadings, but must show, by reference to affidavits or other evidence, that a material issue of fact remains. Fed. R. Civ. P. 56. Here, where the material facts are not in dispute, denial of summary judgment to one party warrants a legal determination in favor of the other, even in the absence of a formal summary judgment motion.[12]

[12] Debtor is not represented by counsel. Her "Response to Motion for Summary Judgment" (Docket No. 31) concludes with a request that the Court discharge her student loan debt.

III. APPLICATION OF THE *BRUNNER* TEST

Student loan obligations may be discharged "if excepting such debt from discharge . . . would impose an undue hardship on the debtor and the debtor's dependents." 11 U.S.C. § 528(a)(8). Educational loans taken out by a parent to benefit a child's education are included in this exception from discharge. *In re Pelkowski*, 990 F.2d 737, 741 (3d Cir. 1993) (holding that "the language and structure of the statute reveal no intent to restrict its reach to student debtors for expenses for their own education"); *Kentucky Higher Educ. Assistance Auth. v. Norris*, 239 B.R. 247, 254 (M.D. Ala. 1999) (holding that "[s]ection 523(a)(8) does not differentiate between a debtor who is a loan beneficiary and a debtor who is the parent of a loan beneficiary"); *Salter v. Educational Resources Inst. (In re Salter)*, 207 B.R. 272, 275 (Bankr. M.D. Fla. 1997) (holding that "the proper focus should be on the kind of debt involved, rather than how the money was spent, or who was the borrower"); *In re Selmonosky*, 93 B.R. 785, 787 (Bankr. N.D. Ga. 1988) (holding that "§ 523 (a)(8) applies to nonstudent co-signer debtors, as well as student debtors"). The dischargeability of the debtor's student loans is a question of law. The debtor must prove "by a preponderance of the evidence each of the elements needed to establish that repayment of the [student] loans would cause [her] undue hardship." *Dewey v. Sallie Mae, Inc.* (*In re Dewey*), Nos. 05-00576 and 05-00684, 2008 WL 366004, at *1 (Bankr. W.D. Tenn. 2008). To evaluate undue hardship under § 523(a)(8), the Eleventh Circuit Court of Appeals in *Hemar Ins. Corp. of Am. v. Cox (In re Cox)*, 338 F.3d 1238 (11th Cir. 2003), adopted the three-prong test articulated by the Second Circuit Court of Appeals in *Brunner v. New York State Higher Education Services*

Corp., 831 F.2d 395 (2d Cir. 1987).[13] To obtain a student loan discharge for undue hardship under the *Brunner* three-prong test, a debtor must show:

(1) that the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for herself and her dependents if forced to repay the loans;

(2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and

(3) that the debtor has made good faith efforts to repay the loan.

Since the debtor carries the burden of proving each element of the *Brunner* undue hardship test, if the debtor fails to prove just one element, the inquiry ends and the student loan will not be discharged. However, the matter before the Court involves a motion for summary judgment. As noted above, the moving party carries the initial burden of proof. The Defendants must show that the undisputed facts preclude Debtor from prevailing as to just one prong of the *Brunner* test supporting Debtor's undue hardship claim. *See White v. United States Dep't. of Educ.* (*In re White*), 243 B.R. 498, 506 (Bankr. N.D. Ala. 1999).

A. Minimal Standard of Living

The first prong of the *Brunner* test requires a debtor to show that repayment of the student loan would not allow her to maintain a minimal standard of living. In determining whether the debtor can maintain a minimal standard of living, the Court must examine the debtor and her spouse's earnings to evaluate the quality of the debtor's lifestyle. *See id.* at 509. Debtors cannot

[13] While "[b]ankruptcy courts use a wide variety of tests to determine whether the debtor has demonstrated undue hardship. . . . [s]everal of our sister circuits have . . . adopted the test set forth by the Second Circuit in *Brunner*." *Hemar Ins. Corp. of Am. v. Cox*, 338 F.3d 1238, 1241 (11th Cir. 2003).

satisfy the test "merely because repayment would require some major personal or financial sacrifices." *Elmore v. Massachusetts Higher Educ. Assistance Corp.* (*In re Elmore*), 230 B.R. 22, 26 (Bankr. D. Conn. 1999). Thus, the debtor must prove that she cannot afford the basic living necessities if forced to repay the loan. *See Ivory v. United States* (*In re Ivory*), 269 B.R. 890, 899 (Bankr. N.D. Ala. 2001); *Rutherford v. William D. Ford Direct Loan Program (In re Rutherford)*, 317 B.R. 865, 878 (Bankr. N.D. Ala. 2004) (opining that the "minimal standard of living" relates to the smallest degree of income necessary to cover all expenses essential for daily existence).

The Bankruptcy Court for the Northern District of Alabama identified six factors that it deemed necessary for a minimal standard of living in America, including shelter, basic utilities, food and personal hygiene products, vehicles and the costs associated with a vehicle, health insurance, and some source of recreation. *Ivory v. United States* (*In re Ivory*), 269 B.R. 890, 899 (Bankr. N.D. Ala. 2001). The Bankruptcy Court for the Middle District of Georgia utilized these factors in its analysis of a student loan dischargeability filing and prior to its analysis of the facts, added: "[T]he Court must apply its common sense knowledge gained from ordinary observations in daily life and general experience to determine whether Debtor's expenses are reasonable and necessary. If Debtor expends funds for items not necessary for the maintenance of a minimal standard of living or if Debtor expends too much for an item that is needed to maintain that minimal standard of living, then it is unlikely that, given Debtor's present circumstances, the first prong of the *Brunner* test is satisfied where such overpayment would permit Debtor to cover the expense of her student loan debt without sacrificing a minimal standard of living . . . ." *Douglas v. Educ. Credit Mgmt. Corp.* (*In re Douglas*), 366 B.R. 241, 253-54 (Bankr. M.D. Ga. 2007).

Based on the undisputed material facts in this case, it cannot be said that Debtor maintains more than a "minimal" standard of living. Defendant admits that Debtor is not living a "lavish" lifestyle. Far from living lavishly, Debtor is living without the health insurance, vehicle, and entertainment sources found necessary for a minimal standard of living in *In re Ivory*. Debtor's expenses are entirely associated with the most basic costs of living: shelter, utilities, food, and public transportation. While Defendant does not challenge Debtor's standard of living, Debtor has met her burden of proof for the first prong of the *Brunner* test.

B. Additional Circumstances

The second prong of the *Brunner* test requires a debtor to prove that additional circumstances exist indicating that she cannot maintain a minimal standard of living for a significant portion of the repayment period if the loans are not discharged. A debtor must show "a total incapacity . . . in the future to pay [her] debts for reasons not within her control." *In re Mallinckrodt*, 274 B.R. 560, 566-67 (S.D. Fla. 2002) (quoting *Brightful v. Pa. Higher Educ. Assistance Agency* (*In re Brightful*), 267 F.3d 324, 328 (3d Cir. 2001)). Further, satisfaction of the second prong should be based on a "certainty of hopelessness." *In re Douglas*, 366 B.R. 241, 256 (Bankr. M.D. Ga. 2007); *see also Downey v. Sallie Mae, Inc.* (*In re Downey*), 255 B.R. 72, 76-77 (Bankr. N.D. Fla. 2000) (Plaintiff, a public defender, presented no evidence to suggest that her financial position was unlikely to improve).

With a current annual income of approximately $17,553.60, which is less than half the median income for a one-person household in Georgia, Debtor does have a present financial

hardship. Even with Defendant's suggested possible income for Debtor, of $22,512,[14] Debtor would be well below the applicable average median income. Debtor is currently 62 years old. Debtor does not have a college degree, nor any advanced degrees. Instead, her education has been limited. Her history of back problems prohibits her from resuming in her chosen career, in which she had been employed for over 13 years . Debtor testified that her present age and inexperience at other work have prevented her from attaining stable, full-time employment dispite consistent and continuing efforts to obtain same. While Debtor is increasing her experience by serving as a temporary employee, Debtor's age limits the number of years she is likely to remain in the workforce.

Defendant points to Debtor's good health as evidence that she should be able to earn more in the future. The Court does not agree. Evidence of poor physical or mental health is not necessary to a finding of hopelessness and Debtor's age and limited education mean she will have a "limited work life" despite her general good health. *See, e.g., Pa. Higher Educ. Assistance Agency v. Taylor*, 334 B.R. 576, 585 (N.D. Ohio 2005) (finding a 56-year-old woman with only a ninth-grade education had a "limited work life" despite having no physical or mental disabilities). Moreover, Debtor has a history of back problems and her lack of health insurance makes it more likely that even minor health problems could be economically debilitating.

If Debtor is fortunate enough to make $22,512, as Defendant suggests she can, and remains in the workforce for another ten years, Debtor's actual and allowable living expenses

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[14] Defendant points out that Debtor could make up to $13,560 annually without affecting her Social Security benefits. (Statement, ¶ 40). Defendant does not, however, provide any evidence of how Debtor could make up to $13,560 annually, regardless of the effect on her Social Security benefits.

would still preclude any meaningful repayment of her student loan obligations. Debtor's current reported expenses of approximately $1,220 do not include some of the basic necessities Debtor needs, such as health care and household supplies. Inflation is likely to absorb any modest income gains.[15] Despite Defendant's optimism regarding Debtor's future, Debtor has carried the burden of demonstrating her future inability to pay her student loans.

C. Good Faith Effort

Under the third and final prong of the *Brunner* test, a debtor must act in good faith to repay the loan. The good faith analysis requires the Court to consider the debtor's efforts to obtain employment, maximize income, and minimize expenses. *Educ. Credit Mgmt. Corp. v. Frushour* (*In re Frushour*), 433 F.3d 393, 402 (4th Cir. 2005). Furthermore, "the debtor may not willfully or negligently cause [her] own default, but rather [her] condition must result from 'factors beyond [her] reasonable control.'" *In re Roberson*, 999 F.2d 1132, 1136 (7th Cir. 1993). Whether the debtor has made or attempted to make payments is not itself dispositive, but the Court should evaluate the debtor's conduct in the broader context of her entire financial picture. *Nary v. Complete Source* (*In re Nary*), 253 B.R. 752, 768 (N.D. Tex. 2000).

The Court finds that Debtor's actions evidence a good faith effort to repay her student loans. Debtor has demonstrated a history of paying student loans when she was able: she repaid the student loans she took out for her own education, and she made payments on the loans she

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[15] While the Means Test is not designed to identify undue hardships for purposes of discharging student loans, and therefore is not dispositive of the question here, the Court finds it to be informative. The Means Test would permit Debtor expenses of up to $2,087 per month. A monthly income of $1,876 would cover only approximately 90 percent of those expenses. Upon considering Debtor's permissible expenses under the Means Test, it is clear that Debtor's basic expenses easily could preclude student loan payments even if Debtor had the higher income Defendant suggests.

took out for her daughters' educations. Additionally, Debtor took the step of contacting her student loan provider to seek help managing her student loan payments prior to filing for bankruptcy. Finally, Debtor has consistently maximized her income and minimized expenses. Debtor's work history shows that she has typically worked full-time in the jobs for which she was best trained. When she had to leave her chosen profession, she sought new full-time positions before ultimately taking temporary assignments when she could not find other work. Debtor's current expenses are too low to account for some of Debtor's basic needs. Debtor has met the burden of proof as to the third, and final, prong of the *Brunner* test.

These facts lead to the Court's conclusion that requiring Debtor to pay back her student loans would cause Debtor an undue hardship. Defendant is not entitled to a judgment of nondischargeability of the student loan debt pursuant to § 523(a)(8) as a matter of law, but Debtor is entitled to a judgment discharging her student loans.

IV. CONCLUSION

"Congress enacted 11 U.S.C. § 523(a)(8) in an effort to prevent abuses in and protect the solvency of educational loan programs." *Pennsylvania Higher Educ. Assistance Agency v. Faish* (*In re Faish*), 72 F.3d 298, 302 (3d Cir. 1995); *Andrews Univ. v. Merchant* (*In re Merchant*), 958 F.2d 738, 742 (6th Cir. 1992). Here, however, there is no evidence of abuse by Debtor. Debtor has demonstrated an undue hardship as to any amount of student loan payments, including interest and fees. Accordingly, it is

ORDERED that Defendant's Motion for Summary Judgment with respect to Debtor's claim to a discharge of her student loans under § 523(a)(8) is hereby **DENIED.**

IT IS FURTHER ORDERED that Debtor's student loans are hereby **DISCHARGED**.

The Clerk shall serve a copy of this Order upon the Defendant, counsel for Defendant, and Debtor.

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