



**IT IS ORDERED as set forth below:**

**Date: January 16, 2015**

A handwritten signature in black ink, appearing to read "Barbara Ellis-Monro".

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**Barbara Ellis-Monro  
U.S. Bankruptcy Court Judge**

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE:

SHONDRIAL RENA JACKSON-CARMONA,

Debtor.

CASE NO. 14-53879-BEM

CHAPTER 7

GEORGIA DEPARTMENT OF HUMAN  
SERVICES,

Plaintiff,

v.

ADVERSARY PROCEEDING NO.  
14-5129-BEM

SHONDRIAL RENA JACKSON-CARMONA,

Defendant.

**ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Court on Plaintiff's Motion for Summary Judgment (doc. no. 15). Plaintiff filed a complaint to determine the dischargeability of a debt pursuant to 11 U.S.C. § 523(a)(2) and (a)(4) (doc. no. 1, hereinafter the "Complaint"). The Complaint

alleges that Debtor-Defendant (“Defendant”) fraudulently received overpayment of food stamps from Plaintiff in the amount of \$17,167 by failing to disclose all financial contributions to her household and that such debt has been established by proceedings in the Georgia Office of State Administrative Hearings (“OSAH”). Defendant, acting *pro se*, filed an answer denying any wrongdoing and alleging she was not properly served with notice of the OSAH hearing (doc. no. 5, hereinafter the “Answer”). Defendant also filed a counterclaim alleging violations of the automatic stay based on Plaintiff’s postpetition interception of Defendant’s federal income tax refund and postpetition letters demanding payment of the debt (doc. no. 6). Plaintiff filed a motion for summary judgment limited to its claim under § 523(a)(2)(B) (doc. no. 15). Defendant filed a timely response (doc. no. 16), and the matter is now ripe for determination. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I), and the Court has jurisdiction over the matter pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. § 523.

### **I. Summary Judgment Standard**

Motions for summary judgment are governed by Federal Rule of Civil Procedure 56, made applicable in adversary proceedings by Federal Rule of Bankruptcy Procedure 7056. Summary judgment is appropriate when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24, 106 S. Ct. 2548, 2553 (1986). “The inquiry performed is the threshold inquiry of determining whether ... there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S. Ct. 2505, 2511 (1986).

The moving party has the burden of establishing its entitlement to summary judgment. *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). The moving party must identify the pleadings, discovery materials, or affidavits that show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once this burden is met, the nonmoving party cannot merely rely on allegations or denials in its own pleadings. *Hairston v. Gainesville Sun Publ'g. Co.*, 9 F.3d 913, 918 (11th Cir. 1993). Rather, the nonmoving party must present specific facts supported by evidence that demonstrate there is a genuine material dispute. *Id.* In deciding a motion for summary judgment, the Court views the evidence and reasonable inferences in favor of the non-moving party. *Gray v. Manklow (In re Optical Tech., Inc.)*, 246 F.3d 1332, 1334 (11th Cir. 2001).

The movant is required to submit a separate statement of material facts, and the respondent is required to file a statement controverting any facts in dispute. BLR N.Ga. 7056-1(a)(1), (2). Any facts not controverted by the respondent will be deemed admitted. *Id.* 7056-1(a)(2). When the material facts are not in dispute, the role of the Court is to determine whether the law supports a judgment in favor of the moving party. *Anderson*, 477 U.S. at 250.

## **II. Facts**

Defendant did not file a statement controverting the facts set forth in Plaintiff's Statement of Material Facts in Dispute and has thus, pursuant to BLR 7056-1(a)(2), admitted the following: (1) from September 12, 2008 to February 1, 2012 ("Benefit Period"), Defendant received food stamp benefits; (2) during the Benefit Period, Defendant failed to provide complete and accurate financial information regarding her household in her Food Stamp review forms; (3) Plaintiff referred its case to the Office of Administrative Hearing of the State of Georgia which issued a Notice of Hearing setting a date for an administrative hearing on January

18, 2013; (4) at the administrative hearing, Defendant failed to appear. Plaintiff presented its case and the OSAH filed a Final Decision on January 22, 2013 (“OSAH Decision”). The OSAH held that Defendant intentionally misrepresented her financial condition resulting in an over-issuance of food stamps from the Plaintiff. The OSAH also held that Defendant was indebted to Plaintiff for \$17,167.00 for the over-issuance of food stamps; (5) on February 27, 2014, Defendant filed for Chapter 7 bankruptcy; (6) Plaintiff filed this adversary proceeding on April 25, 2014 seeking a determination from this Court that the indebtedness owed to Plaintiff by Defendant for the overpayments of food stamps is excepted from discharge; (7) the Complaint and Summons were served on April 25, 2014, via U.S. mail to Defendant at 2415 Northbrook Road, Snellville, GA 30039; (8) Defendant submitted an Answer and Counterclaim on May 16, 2014; (9) on June 6, 2014, Plaintiff submitted an Answer to Defendant’s Counterclaim; (10) on June 17, 2014, Defendant submitted an Objection to Plaintiff’s Answer to Counterclaim; (11) on July 30, 2014, Plaintiff served Defendant with its First Set of Interrogatories, Request for Production of Documents, and a Request for Admissions; and, (12) on August 27, 2014, Defendant served Plaintiff with its Response to Plaintiff’s Interrogatories, Request for Production of Documents, and Request for Admissions (doc. no. 15, Statement of Material Facts as to Which There Exists No Issue, hereinafter “Plaintiff’s Statement of Facts”).

Notwithstanding, Defendant contends that she and her husband did not live together during the entire Benefit Period (doc. no. 16, Defendant’s Opposition to Motion for Summary Judgment at p.2, hereinafter “Defendant’s Response”). She offers no evidence to show his actual residence, nor does she deny receiving any financial contribution from her husband during the Benefit Period. Defendant contends she did not intend to receive benefits in excess of those for which she qualified (Defendant’s Response at p.2). When she learned of the OSAH

ruling against her, she contacted Plaintiff and attempted to work out a payment plan of \$150 per month, which was rejected by Plaintiff (Defendant's Response at p.2). Defendant further contends that the records used to show her husband's employment and place of residence may have contained inaccurate information, and must have been obtained in violation of various entities' privacy policies (Defendant's Response at p.4 and Exhibits A, B, C, and D).

The Court will now consider, given the admitted facts, whether entry of summary judgment is appropriate in this proceeding.

### **III. Legal Analysis**

Plaintiff argues it is entitled to judgment as a matter of law under principles of collateral estoppel and § 523(a)(2)(B) of the Bankruptcy Code. Collateral estoppel bars relitigation of an issue previously decided in another proceeding. *Allen v. McCurry*, 449 U.S. 90, 94, 101 S. Ct. 411, 414 (1980). "A bankruptcy court may rely on collateral estoppel to reach conclusions about certain facts, foreclose relitigation of those facts, and then consider those facts as 'evidence of nondischargeability.'" *Thomas v. Loveless (In re Thomas)*, 288 Fed. Appx. 547, 548 (11th Cir. 2008) (quoting *Halpern v. First Georgia Bank (In re Halpern)*, 810 F.2d 1061, 1064 (11th Cir. 1987)). When the prior decision arises in a state proceeding, the court applies the collateral estoppel law of the jurisdiction where the prior decision was issued. *St. Laurent v. Ambrose (In re St. Laurent)*, 991 F.2d 672, 676 (11th Cir. 1993). In Georgia, administrative decisions are given collateral estoppel effect in a subsequent civil judicial proceeding when:

- (1) both proceedings involve the same parties or their privies;
- (2) the issue was actually litigated and determined in the first proceeding;
- (3) the determination was essential to the judgment in the first proceeding; and
- (4) the party against whom the doctrine is asserted had a full opportunity to litigate the issue in question.

*Malloy v. State*, 293 Ga. 350, 354, 744 S.E.2d 778, 783 (Ga. 2013).

Whether application of collateral estoppel is appropriate here turns on whether the requirements of § 523(a)(2)(B) were actually determined and were essential to the decision in the OSAH proceeding. Under § 523(a)(2)(B), a debt is not dischargeable if it is

for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

...

- (B) use of a statement in writing—
  - (i) that is materially false;
  - (ii) respecting the debtor's or an insider's financial condition;
  - (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
  - (iv) that the debtor caused to be made or published with intent to deceive[.]

11 U.S.C. § 523(a)(2)(B). The OSAH Decision concluded Defendant violated 7 C.F.R. § 273.16(c) (the "Regulation"), which defines an intentional violation of the Food Stamp Program as

having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

7 C.F.R. § 273.16(c). Both laws focus on fraud, but § 523(a)(2)(B) requires more in that the fraudulent act must comprise a written statement respecting the debtor's or an insider's financial condition. The Regulation imposes no such limitations, and the OSAH Decision makes no finding that Debtor submitted a written statement or that the statement related to her or her husband's financial condition.

While the OSAH Decision does not address this issue, Plaintiff's Statement of Facts does at fact 2 and 4. The Statement of Facts states in relevant part that, "Defendant failed to provide complete and accurate financial information regarding her household in her Food Stamp review forms" and that "[t]he court held that the Defendant intentionally misrepresented her financial condition resulting in an over-issuance of food stamps from the Plaintiff." It is not clear what information was provided to show Defendant's financial condition and what facts were relied upon in determining that the information was provided in order to intentionally misrepresent Defendant's financial condition. Indeed, based upon the findings in the OSAH Decision it is possible to infer that the Statement of Facts is inconsistent with the OSAH court's finding. This is true because, if the OSAH judge wanted to make a finding based on evidence of a fraudulent financial statement,<sup>1</sup> she easily could have done so by checking a box. The OSAH Decision was entered on what appears to be a form order. Under the section for Findings of Fact, the judge can check one of three boxes indicating that the respondent: (1) failed to report correct household income in a timely manner; (2) failed to report correct household composition in a timely manner; or (3) other. In this case, the judge checked only the box that Defendant failed to report the correct household composition, leaving blank the finding regarding household income. (OSAH Decision, doc. no. 15-1, Exhibit A, Final Decision, Findings of Fact). Thus, because the OSAH Decision does not contain findings of fact that support Plaintiff's asserted facts and because such facts are not necessary to establish a violation under the Regulation, the Court cannot infer such findings. Plaintiff has not shown that the relevant issues were decided in the OSAH proceeding or were essential to the OSAH Decision. Therefore, Plaintiff cannot prevail on its motion for summary judgment under a collateral estoppel theory.

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<sup>1</sup> The Court assumes without deciding that a statement of household income would be a statement regarding Defendant's financial condition for purposes of proving a § 523(a)(2)(B) claim.

#### **IV. Conclusion**

Plaintiff has failed to establish all the elements of collateral estoppel for a claim under § 523(a)(2)(B). Plaintiff has failed to show that the judge in the OSAH proceeding found fraud based on a written statement regarding Defendant's or her husband's financial condition and failed to show such a finding was essential to the OSAH decision. Because such findings are necessary to prove a claim under § 523(a)(2)(B), Plaintiff is not entitled to judgment as a matter of law on its § 523(a)(2)(B) claim. Accordingly, it is hereby

ORDERED that Plaintiff's motion for summary judgment is DENIED.

**END OF ORDER**



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