

IN THE UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
PAULA JEAN BROWN, : Case No. 89-2403-C
 :
 Debtor. : Adversary No. 90-0028
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IOWA DEPARTMENT OF HUMAN :
SERVICES, : Chapter 7
 :
 Plaintiff, :
 :
 vs. :
 :
 PAULA JEAN BROWN, :
 :
 Defendant. :
 :

**ORDER ON COMPLAINT OBJECTING TO
DISCHARGEABILITY OF DEBT**

Trial on the above-captioned complaint was held on July 30, 1991. The plaintiff was represented by Valencia V. McCown and Robert C. Oberbilig appeared for the defendant. The matter was taken under advisement and the court considers it fully submitted.

The court has jurisdiction of this complaint pursuant to 28 U.S.C. § 1334 and 157(b)(1). This is a core proceeding. 28 U.S. C. § 157(b)(2)(I). The court now enters its findings of fact and conclusions of law. Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1) Paula Jean Brown, the defendant, completed a form captioned "Application For Aid To Dependent Children" on September 29, 1982.

2) In answering the application the defendant indicated

she was not employed and derived no income from employment.

3) The application contained a certification statement which the defendant signed and dated on September 29, 1982.

4) The certification statement required the signer to notify the County Department of Social Services of any change in income within ten (10) days of the date the change occurred.

5) The defendant received Aid for Dependent Children and food stamps from September 20, 1983 through June 30, 1984.

6) The defendant obtained employment with the Craigmont Care Center on September 12, 1983.

7) The defendant did not report her employment and the resulting income to the Iowa Department of Human Services, the plaintiff, until the plaintiff discovered her employment in March 1984 and questioned her about it. The court finds the defendant knew of her duty to report her changed status and did not do so because she intended to deceive the plaintiff in order to continue receiving benefits.

8) The plaintiff subsequently took action to terminate the defendant's receipt of benefits and to recover amounts overpaid for Aid to Dependent Children, food stamps and Title XIX medical costs.

9) The defendant filed a voluntary Chapter 7 petition on October 27, 1989.

10. The plaintiff filed an adversary complaint on

January 29, 1990, seeking a determination of dischargeability of debt under section 523(a)(2)

CONCLUSIONS OF LAW

In its complaint, the plaintiff relies on § 523(a)(2) in objecting to the dischargeability of the obligation the defendant owes it for overpayments. A creditor bears the burden of proof in proving the nondischargeability of a debt, Matter of Van Horne, 823 F.2d 1285, 1287 (8th Cir. 1987), and it must prove nondischargeability by a preponderance of the evidence. Grogan v. Garner, ___ U.S. ___ 111 S.Ct. 654, 661, 112 L.Ed.2d 755 (1991). Any evidence presented in a dischargeability action must be viewed consistent with the congressional intent that exceptions to discharge be narrowly construed against the creditor and liberally against the debtor, thus effectuating the fresh start provisions of the Code. Van Horne, 823 F.2d at 1287.

Section 523(a)(2) provides in relevant part:

- (a) A discharge under section 727 does not discharge an individual debtor from any debt--
 - (2) for money, property, services or an extension, renewal, or refinancing of credit to the extent obtained by--
 - (A) false pretenses, a false representation, or actual fraud, **other than a statement respecting the debtor's or an insider's financial condition.**
 - (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 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.

(Emphasis added.)

Section 523(a)(2) divides all statements into two mutually exclusive categories. Statements concerning a debtor's financial condition are governed by subsection (B). Representations not concerning a debtor's financial condition must be considered under subsection (A). In re Simpson, 29 B.R. 202, 207-08 (Bankr. N.D. Iowa 1983). What exactly constitutes a "statement respecting a debtor's financial condition" is not defined in the Code. Various decisions emanating from the bankruptcy court for the northern district of Iowa have held a balance sheet, Simpson, 29 B.R. at 210, a valuation of inventory, In re Anderson, 29 B.R. 184, 189 (Bankr. N.D. Iowa 1983), and a valuation of a profit-sharing pension plan, In re Detling, 28 B.R. 469, 473 (Bankr. N.D. Iowa 1983), all constitute statements regarding a debtor's financial condition.

It is this court's conclusion that a statement regarding a debtor's employment and level of income is a statement respecting a debtor's financial condition. See e.g., In re

Posick, 26 B.R. 499 (Bankr. S.D. Fla. 1983); In re Archangeli, 6 B.R. 50 (Bankr. D. Me. 1980). Contra In re Bonefas, 41 B.R. 74, 78 (Bankr. N.D. Iowa 1984) (a statement of income on department store credit application held not to be a statement respecting a debtor's financial condition). Under the facts of this case, where eligibility for a need-based governmental program was dependent upon an individual's earnings, a statement regarding the defendant's employment status and level of income was clearly a statement respecting her financial condition. Since disposition of this matter involves a statement respecting the defendant's financial condition, the plaintiff can only prevail under § 523(a)(2)(B) and any further analysis of § 523(a)(2)(A) is unnecessary.

A creditor must prove every element contained in § 523(a)(2)(B) to preclude a debt from discharge. In re Bush, 696 F.2d 640, 644, n.4 (8th Cir. 1983). Discharge is barred only if it is proven the debtor acted with an "intent to deceive." In re Long, 774 F.2d 875, 877 (8th Cir. 1985).

The defendant completed the application for Aid to Dependent Children on September 29, 1982, and she indicated on the application that she was unemployed and had no income from employment. At the time she completed the application those statements were true. However, the "certification statement" section of the application imposed upon the applicant a continuing duty to inform the plaintiff of any change in her

level of income. The defendant also had a legal obligation to report any change in her income. 441 IAC 40.7(4)(e)(1).

The defendant had a continuing duty to inform the plaintiff of any changes in her employment status or income level, and the court finds the defendant, with intent to deceive, did not inform the plaintiff of her changed status. The plaintiff reasonably relied on the veracity of the defendant's application for aid and upon her legal obligation to update the information contained in her application.

This case presents a unique situation in that the defendant's application for assistance was truthful when initially prepared but subsequently became false when the defendant obtained employment and failed to notify the plaintiff of her changed status. Does section 523(a)(2)(B) encompass the situation in which a debtor disregards her continuing duty to update a statement regarding her financial condition? Various courts have addressed the nondischargeability implications of false representations and public assistance overpayments. See In re Winston, 114 B.R. 566 (Bankr. N.D. Ill. 1990) (unemployment benefits); In re Hatcher, 111 B.R. 696 (Bankr. N.D. Ill. 1990) (public assistance); In re Jones, 37 B.R. 195 (Bankr. E.D. Mo. 1984) (AFDC payments); In re Berry, 3 B.R. 430 (Bankr. D. Or. 1980) (public assistance). This court rejects the view of the Hatcher court which concluded section 523(a)(2)(B) applies

only to the accuracy of a financial statement at the time it is presented and not to subsequent events which later make the statement inaccurate. Hatcher, 111 B.R. at 700. This court finds more persuasive the decision in Jones which held a debtor who was under a statutory duty to disclose any change in her employment status had made a materially false statement by failing to notify her social worker of her new employment. Jones 37 B.R. at 197.

The defendant was under a continuing legal duty to report a change in her income status. With an intent to deceive the plaintiff, she did not report her acquisition of a job and the income resulting therefrom. The defendant's written representation regarding her income level was a material representation regarding her financial condition. The plaintiff reasonably relied upon it and upon the defendant's continuing duty to update its veracity.

The plaintiff has proven the nondischargeability of the debt by a preponderance of the evidence.

IT IS HEREBY ORDERED that the benefit overpayments the defendant received are nondischargeable pursuant to § 523(a)(2)(B).

Dated this 8th day of January 1992.

JUDGE RUSSELL J. HILL

U.S. Bankruptcy Court