

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

U.S. BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
FILED  
NOV 07 1997  
CHARLENE J. PENNINGTON, CLERK  
BY DEPUTY  
CASE NO. 9603679JEE

IN RE: EARLENE BRIDGES

MISSISSIPPI DEPARTMENT  
OF HUMAN SERVICES

PLAINTIFF

VS.

ADVERSARY NO. 970001JEE

EARLENE BRIDGES

DEFENDANT

Gloria J. Green  
Special Assistant Attorney General  
P.O. Box 220  
Jackson, MS 39205

Attorney for Mississippi Department of  
Human Services

Bernard W. N. Chill, Jr.  
Post Office Box 2427  
Jackson, MS 39225

Attorney for Debtor

Edward Ellington, Bankruptcy Judge

MEMORANDUM OPINION

This adversary proceeding is before the Court on the *Motion for Summary Judgment* filed by the Plaintiff, Mississippi Department of Human Services ("MDHS"). MDHS is seeking a judgment of nondischargeability against the Debtor, Earlene Bridges, pursuant to 11 U.S.C. §

523(a)(2).<sup>1</sup> After considering the motion, the MDHS' statement of undisputed facts, and MDHS' brief in support of the motion along with the pleadings filed in this adversary proceeding, the Court holds that the motion of MDHS for summary judgment is well taken and should be granted. In so holding, the Court makes the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

On September 19, 1996, the Debtor, Earlene Bridges, filed a petition for relief under Chapter 7 of the Bankruptcy Code. MDHS subsequently commenced this adversary proceeding against the Debtor seeking a determination that certain public assistance benefits advanced to the Debtor are nondischargeable under § 523(a)(2)(A).

MDHS was created by the State of Mississippi to "provide basic services and assistance statewide to needy and disadvantaged individuals and families." Miss. Code Ann. § 43-1-4 (1972).

Pursuant to statutory authority, MDHS applies for, disburses and administers benefits under the federal Food Stamp and Aid to Families with Dependent Children ("AFDC") programs.

On December 30, 1987, the Debtor made a written application with MDHS for food stamps. On the application, the Debtor indicated that she was employed with Breadline Sandwiches. The Debtor subsequently filed food stamp recertification applications on October 3, 1989, and January 2, 1990. On May 24, 1990, she filed another reapplication for public assistance and requested cash assistance under the AFDC and Medicaid programs. Thereafter, the Debtor filed recertification applications on November 26, 1990, May 21, 1991, October 29, 1991, and May 6, 1992.

As part of the Debtor's applications and recertifications, the Debtor signed a document, DPW-50 (later DHS-EA-530), acknowledging that her rights and responsibilities under the Food

---

<sup>1</sup> Hereafter, all code sections refer to the United States Bankruptcy Code found at Title 11 of the United States Code unless otherwise noted.

Stamp and AFDC programs had been explained to her. She was also informed of her duty to provide accurate and complete information and to report a "change of status" to her eligibility worker. A "change of status" includes a change in the source or amount of income.

On February 15, 1988, the Debtor became employed by the Clorox Company ("Clorox"). She was also employed for a short period of time in 1991 and 1992 with the Krystal Company ("Krystal") while maintaining her employment with Clorox. While employed by Clorox, the Debtor earned \$58,259.83 over a five year period and earned \$400.66 at Krystal. Despite her obligation to report her change of status to MDHS, the Debtor failed to report her employment with either Clorox or Krystal. Rather, the Debtor represented that she was unemployed and earned no income. The Debtor also filed Monthly Eligibility and Income Reports with MDHS indicating that she had no income from work.

In August, 1992, MDHS discovered that the Debtor was employed and had failed to report her change of status to MDHS. After verifying the Debtor's employment with Clorox and Krystal, MDHS notified the Debtor of her responsibility to repay the value of the food stamp benefits given to her. After the Debtor failed to respond, the Debtor was provided with notice of a disqualification hearing. At the hearing, which the Debtor failed to attend, an administrative hearing officer determined that she had intentionally violated the Food Stamp program.

During the relevant period, the Debtor received \$9245.00 in food stamp benefits. Of this amount, the Debtor was eligible to receive only \$460.00 in benefits. After verifying the Debtor's employment status, MDHS erroneously continued to advance food stamp benefits to the Debtor in the amount of \$1685.00. MDHS was able to recover \$186.00 of the overpayment from the Debtor. Thus, the total amount of MDHS' claim for overpaid food stamp benefits is \$6914.00. Due to her employment status, the Debtor was not eligible for any AFDC benefits. She received \$3240.00 in

AFDC benefits. Due to the same agency error, the Debtor was also erroneously overpaid \$720.00. Thus, the total amount of the claim for overpaid AFDC benefits is \$2520.00; the total for both food stamps and AFDC benefits is \$9434.00.

### CONCLUSIONS OF LAW

This Court has jurisdiction of the subject matter and of the parties to this proceeding pursuant to 28 U.S.C. §§ 1334 and 157. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(I).

Rule 56 of the Federal Rules of Civil Procedure as made applicable by Rule 7056<sup>2</sup> of the Federal Rules of Bankruptcy Procedure provides that in order for this Court to sustain a motion for summary judgment, the Court must find that "[t]he 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, 322-34, 106 S.Ct. 2548, 2552-58, 91 L.Ed.2d 265 (1986). Although the Court must view the available evidence in the light most favorable to the nonmoving party, see Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587-88, 106 S.Ct. 1348, 1356-57, 89 L.Ed.2d 538, 553 (1986), an adverse party "may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response . . . must set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.Proc. 56(e). Although the Debtor denied most of the allegations contained in MDHS' *Complaint to Determine Dischargeability of Debt*, the Debtor failed to respond to the *Motion for Summary Judgment of MDHS or its Itemization of Material Facts*.

---

<sup>2</sup>Hereinafter, all Rules refer to the Federal Rules of Bankruptcy Procedure unless specifically noted otherwise.

MDHS asserts that its claim against the Debtor is nondischargeable because the Debtor obtained public assistance under false pretenses, made false representations, or committed fraud within the meaning of § 523(a)(2). In order for MDHS to prevail on its § 523 nondischargeability claim, it must prove its case by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 286, 111 S.Ct. 654, 659, 112 L.Ed.2d 755 (1991). The issue of whether a particular debt is nondischargeable under the Bankruptcy Code is a matter of federal law. Id.; Allison v. Roberts (Matter of Allison), 960 F.2d 481, 483 (5th Cir. 1992).

Section 523(a)(2) of the Bankruptcy Code provides in relevant part as follows:

**11 USC § 523**

**§ 523. Exceptions to discharge.**

(a) A discharge under section 727, ... of this title 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;  
[or]

(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....

Although the Debtor's representation regarding her employment status at the time of her December 30, 1987, application was true, it became false less than two months later when the Debtor began employment with Clorox. Furthermore, the Debtor made false representations about

her financial condition on subsequent reapplications for public assistance by reporting that she was unemployed. The Debtor continued to receive public assistance because MDHS reasonably relied upon her representations that she was not employed. If MDHS had been aware of the Debtor's income from her employment with Clorox and Krystal, her application would have been denied because the Debtor would have been ineligible for public assistance. The Debtor had been informed by MDHS both verbally and in writing that she had a duty to report any change in the source or amount of her income. For several years the Debtor failed to report her employment with Clorox and Krystal and only when MDHS discovered the Debtor's employment did benefits cease.

The public assistance benefits advanced to the Debtor are clearly nondischargeable under § 523(a). As another Court faced with almost an identical fact scenario stated:

Where a debtor receiving benefits fails to inform a welfare agency of new employment, but accepts and thereby fraudulently continues to receive benefits, and the agency reasonably relies on debtor's original reported unemployed status in continuing benefits, the debt to the agency resulting from such improperly paid benefits is nondischargeable under 11 U.S.C. § 523(a)(2)(A).

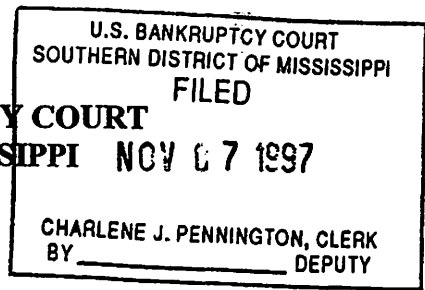
In re Hatcher, 111 B.R. 696, 700 (Bankr. N.D. Ill. 1990)(citing In re Jones, 37 B.R. 195, 196 (E.D. Mo. 1984)(debt for overpaid AFDC benefits was nondischargeable where debtor failed to inform welfare agency of new employment; agency reasonably relied on debtor's statement of employment status in advancing benefits to debtor)).

Based on the foregoing, this Court holds that the *Motion for Summary Judgment* of MDHS is well taken and should be granted. A separate final judgment consistent with this opinion will be entered in accordance with Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

This the 7<sup>th</sup> day of November, 1997.

  
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**



**IN RE: EARLENE BRIDGES**

**CASE NO. 9603679JEE**

**MISSISSIPPI DEPARTMENT  
OF HUMAN SERVICES**

**PLAINTIFF**

**VS.**

**ADVERSARY NO. 970001JEE**

**EARLENE BRIDGES**

**DEFENDANT**

**FINAL JUDGMENT**

Consistent with the Court's opinion dated contemporaneously herewith, it is hereby ordered and adjudged that:

1. Judgment shall be, and hereby is, granted against the Debtor, Earlene Bridges, in favor of the Mississippi Department of Human Services in the amount of \$9434.00;
2. Said judgment shall be, and hereby is, excepted from discharge in bankruptcy pursuant to 11 U.S.C. § 523(a)(2); and
3. This judgment is a final judgment for the purposes of Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

**SO ORDERED** this the 7<sup>th</sup> day of November, 1997.

  
UNITED STATES BANKRUPTCY JUDGE