

By Tiffany Poole, Esquire --recent PA and DE cases and status as to her cases in progress for dischargeability.

In re Hendel, 23-00019 (Bankr. E.D. Pa. May 2, 2025)—Judge Ashley M. Chan

The student loan is for Debtor's daughter but Debtor, Mr. Hendel, is the only one responsible. Daughter was in school from 2005 to 2009, and upon graduation she was immediately approved for a deferment and remained in deferment. Debtor never applied for Income Driven Repayment Plan and \$2400 in payments was paid on the \$54124 Principal balance as of June 2023—Interest rate was not disclosed.

Only question in dispute was if Debtor lacked the resources to pay on the debt moving forward

Debtor and his wife are in their 70's, but they still both work with no plan to retire. They have downsized their home and have not taken a self-funded vacation in decades. Debtor and Wife just started collection of social security income when they turned 70 in order to receive the maximum amount.

Court applied the Brunner Test. Court said that **Debtor admitted that with the social security income and with his income from employment, he could currently afford to pay the loans without sacrificing his standard of living.** Accordingly, the student loans were not discharged. Debtor was *pro se* and filed the complaint after review of the Guidance issued by DOJ—footnote 1.

In RE: Wolfson, 19-50717 (Bankr.D. Del. Jan 14, 2022)—Judge Laurie S. Silverstein

Wolfson had \$95,000 in student loans that he requested to be discharged. The court applied the Brunner Test.

Wolfson was 34 years old, not married and no children. He was diagnosed with epilepsy with seizures at the age of 12. His seizures were controlled by medication by 22 and since 23 years old, he did not need the medication. Instead, he started treating himself with cannabis.

After graduation, Wolfson manages a hip-hop artist and co-owned a TV show. Neither venture turned a profit. Since, Wolfson persistently sought work with little success. From graduation until 2026 (six years), he applied for approximately 30 jobs, yielding no offers.

In 2019, Wolfson suffered another seizure totaling his car so he could not work as a car driver and has not worked since. Wolfson testified that he could not take a job that started prior to 9:30 due to risk of seizure and not a job that drug tested due to cannabis use. He also could not take a job after 8:00pm because that is when he starts the cannabis use.

IN 2019, Wolfson moved back in with his parents and as of the date of trial he was not working and had no other source of income. Furthermore, Wolfson never paid a voluntary payment on the loans and while he was eligible to consolidate or obtain various repayment options, he never did.

The first Brunner prong requires the court to examine Wolfson's current financial condition to see if payment of the loans would cause his standard of living to fall below that minimally necessary. Judge did not consider parent's contribution as income. Court concluded that Wolfson had no income and satisfied efforts to maximize his income

The second prong requires debtor to show that "additional circumstance exist indicating that inability to repay loans without impairing the debtor's minimal standard of living is likely persistent for a significant portion of the repayment period." Court looked at the actual repayment period—10 year term which had matured, not a hypothetical period—based on IBR term for which he might have applied, and concluded that since Wolfson's repayment period already ended, then second prong was satisfied.

Final prong requires Wolfson to prove a good faith effort to repay and this included whether a debtor can justify a history of nonpayment by showing debtor's efforts to obtain employment, maximize income and minimize expenses. The Court found that Wolfson had satisfied this prong as well.

Burden at Trial = preponderance of evidence.

Interesting Fact, after Discharge issued, the Debtor immediately filed this adversary complaint and Navient was included. One month later Navient and Debtor stipulated to dismissal and that Navient portion was discharged which was ordered approved.

Comparison of the 2 cases:

Minimum standard of living: DE: Does not have to live in "abject poverty" but both reliance on ***In re Faish***, 72 F.3d 298, 305-06 (3d Cir. 1995)

Repayment period limited to actual contract terms and acceleration of debt.

Age of Wolfson Debtor and objections by Defendants that the IBR plan at \$0 was available, But to what point? Would Attestation prove to forgo Trial today?