

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

ANTHONY VICTOR MARKS,

Debtor.

Case No. DG 14-05828

Hon. Scott W. Dales

Chapter 7

MICHIGAN DEPARTMENT OF HUMAN  
SERVICES,

Plaintiff,

Adversary Pro. No. 14-80301

v.

ANTHONY VICTOR MARKS,

Defendant.

MEMORANDUM OF DECISION AND ORDER

PRESENT: HONORABLE SCOTT W. DALES  
Chief United States Bankruptcy Judge

I. INTRODUCTION

The Michigan Department of Human Services (“MDHS”) filed a three-count complaint against chapter 7 debtor Anthony Victor Marks (the “Debtor” or the “Defendant”), seeking to except from discharge its claim arising from the alleged overpayment of benefits the Debtor received, prepetition, under the federal Supplemental Nutrition Assistance Program (“SNAP”). According to the complaint, MDHS administers the SNAP program in Michigan pursuant to 7 U.S.C. § 2011, *et. seq.*, and M.C.L. § 400.10, *et. seq.* In addition to declaratory relief excepting the debt from discharge, MDHS seeks a money judgment in the amount of \$2,480.00 plus costs.

Despite proper service, the Debtor has not answered the complaint, and the Clerk has entered a default pursuant to Fed. R. Civ. P. 55(a), made applicable to this adversary proceeding pursuant to Fed. R. Bankr. P. 7055. MDHS has filed a motion for default judgment (the “Motion,” DN 7), seeking declaratory and monetary relief. For the reasons that follow, the court will grant the relief requested.

## II. JURISDICTION

The court has jurisdiction under 28 U.S.C. § 1334 and has statutory authority to resolve the dispute as a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(I) (exceptions to discharge), despite possible doubts after *Stern v. Marshall*, 131 S.Ct. 2594, 180 (2011). “Because ‘the action at issue stems from the bankruptcy itself [and] would necessarily be resolved in the claims allowance process,’ *Stern*, 131 S.Ct. at 2618, *Stern* does not strip the bankruptcy court of its constitutional authority to enter a final monetary judgment in this dischargeability action under § 523(a)(2)(B).” *Hart v. Southern Heritage Bank (In re Hart)*, 564 Fed.Appx. 773, 776 (6th Cir. 2014).

## III. ANALYSIS

The complaint alleges that the Debtor misrepresented his eligibility for benefits under the SNAP program, including by making misstatements about his financial condition, and that he received more benefits under the program than he deserved. His failure to answer the complaint constitutes an admission of each of the plaintiff’s factual allegations, except those relating to damages. *See* Fed. R. Civ. P. 8(b)(6).

Although the Clerk’s entry of default “conclusively establishes every factual predicate of a claim for relief,” *Thomas v. Miller*, 489 F.3d 293, 299 (6th Cir. 2007), it does not automatically

entitle MDHS to a default judgment. As case law makes clear, “[e]ven after entry of default, the decision to grant a default judgment is within the Court’s discretion.” *AF Holdings LLC v. Bossard*, 976 F.Supp.2d 927, 929 (W.D. Mich. 2013). The Debtor’s default, moreover, does not establish the legal conclusions set forth in the complaint, only the well-pleaded facts. The court, therefore, retains its authority to consider the legitimacy of the supposed causes of action. *See, generally*, Wright & Miller, 10A Federal Practice & Procedure, § 2688 (3d ed. 1998); *see also Anderson v. Johnson*, 194 F.3d 1311, 1999 WL 1023753, 2 (6th Cir. 1999) (table) (“Even if a default has been entered against a party, it remains for the court to consider whether the unchallenged facts constitute a legitimate cause of action, since a party in default does not admit mere conclusions of law.”).

Here, the default establishes that the Debtor misrepresented his eligibility for benefits under the SNAP program, including by making misstatements about his financial condition, resulting in an overpayment at plaintiff’s expense. As for damages, the affidavit of plaintiff’s counsel and the attached reports support the amount of damages requested in the Motion. *See* Affidavit of Travis M. Comstock, Esq., dated Jan. 22, 2015 (DN 7, pp. 5-12; Fed. R. Civ. P. 43(c)). Mr. Comstock’s affidavit also establishes compliance with the Servicemembers Civil Relief Act, 50 U.S.C. app. § 521(b)(1). The court will, therefore, enter a money judgment in the amount of \$2,480.00 plus court filing fees of \$350.00, for a total of \$2,930.00. *See Longo v. McLaren (In re McLaren)*, 3 F.3d 958, 965–66 (6th Cir.1993) (court considering exception to discharge may enter judgment for the amount of the debt, incident to that determination).

As for the plaintiff’s request for declaratory relief—a judicial declaration that the debt is excepted from discharge—this relief is also appropriate, at least pursuant to § 523(a)(2). The court doubts, however, that MDHS’s claim qualifies as a “domestic support obligation” under §

523(a)(5), as MDHS contends in its third count, notwithstanding the court's review of the cases cited in the complaint. *See Wisc. Dep't of Workforce Dev. v. Ratliff*, 390 B.R. 607 (E.D. Wisc. 2008) (food stamp over-payment is a "domestic support obligation" because benefits allocated based on reported income of the debtor for the support of herself and her kids); *In re Anderson*, 439 B.R. 206, 208-09 (Bankr. M.D. Ala. 2010) (same).

Largely given the court's doubts about the rationale of these out-of-circuit decisions, and also because it is not necessary to reach the issue in order to give MDHS complete relief in this case, the court's decision will rest on § 523(a)(2), not (a)(5).

#### IV. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion (DN 7) is GRANTED and the Clerk shall enter judgment consistent with this Memorandum of Decision and Order.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Memorandum of Decision and Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Travis M. Comstock, Esq., and Anthony Victor Marks.

END OF ORDER

**IT IS SO ORDERED.**

Dated January 29, 2015



A handwritten signature in black ink, appearing to read "S. Dales".

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Scott W. Dales  
United States Bankruptcy Judge