

STATE OF MICHIGAN  
COURT OF APPEALS

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DONALD BADDER,

Petitioner-Appellee,

v

DEPARTMENT OF HUMAN SERVICES,

Defendant-Appellant.

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UNPUBLISHED

February 8, 2011

No. 294245

Ionia Circuit Court

LC No. 09-026779-AA

Before: O'CONNELL, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

The Department of Human Services (DHS) appeals the trial court's order that reversed its finding that petitioner, Donald Badder, is not disabled for purposes of Medicaid and State Disability Assistance (SDA). We reverse and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Mr. Badder states that he injured his back in 1999 while working as a forklift driver. In 2008, Mr. Badder applied for Medicaid and SDA. After his claim was denied, Mr. Badder sought an administrative hearing. The hearing referee reviewed two medical reports, one that was consistent with Mr. Badder's testimony that he could not sit or walk for long periods of time, and was unable to lift more than ten pounds. The other medical report showed that Mr. Badder could lift more than 50 pounds, and could move about fairly normally. The hearing referee ruled that Mr. Badder did not have a severe impairment as required by 20 CFR 416.920(a)(4)(ii), and DHS denied Mr. Badder's application. Mr. Badder sought review in the circuit court, and the court ruled that, contrary to the hearing referee's decision, there was substantial evidence to support a finding that Mr. Badder was disabled for purposes of Medicaid. The court reversed DHS's decision, and DHS brought this appeal.

We review the circuit court's decision to determine whether the court "applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings." *Boyd v Civil Serv Comm*, 200 Mich App 226, 234; 559 NW2d 342 (1996). We hold that, when the circuit court reversed the agency's decision because, in its view, evidence supported a finding that Mr. Badder is disabled, it misapprehended or grossly misapplied the substantial evidence test. As this Court explained in *Dignan v Michigan Pub School Employees Retirement Bd*, 253 Mich App 571, 576; 659 NW2d 629 (2002):

A circuit court's review of an administrative agency's decision is limited to determining whether the decision was contrary to law, was supported by competent, material, and substantial evidence on the whole record, was arbitrary or capricious, was clearly an abuse of discretion, or was otherwise affected by a substantial and material error of law. "Substantial" means evidence that a reasoning mind would accept as sufficient to support a conclusion. Courts should accord due deference to administrative expertise and not invade administrative fact finding by displacing an agency's choice between two reasonably differing views. [Citations omitted.]

Thus, the test is not whether a contrary decision could have been supported by substantial evidence, but whether the decision the agency actually made was supported by substantial evidence. The circuit court based its ruling on its conclusion that Mr. Badder's second medical evaluation better reflected his actual physical limitations and ruled "that there is substantial evidence to support a finding that [Mr. Badder] is disabled for purposes of qualifying for the Medicaid." In so ruling, the circuit court erroneously substituted its judgment for that of the administrative agency. *Vanzandt v State Employees Retirement System*, 266 Mich App 579, 584; 701 NW2d 214 (2005). It is well-settled that, even if the evidence could lead to different conclusions, the court "should accord due deference to administrative expertise and not invade administrative fact finding by displacing an agency's choice between two reasonably differing views." *Dignan*, 253 Mich App at 576.

Our review of the record indicates that the agency applied the proper legal principals, made a reasoned decision that was supported by competent, material, and substantial evidence, and its decision was not arbitrary or capricious. The hearing referee cited the following evidence in the record: At a March 5, 2008 medical examination, Mr. Badder stated that he does not use an assistive device, that he can sit and stand for about 30 minutes and can walk 80 feet before experiencing pain in his back. Mr. Badder stated that he "can still lift upwards of 50 pounds." The exam revealed that Mr. Badder has full fist and full grip strength bilaterally, and his dexterity is unimpaired. Mr. Badder was able to pick up a coin, button clothing, open a door, get on and off the examination table, and walk heel to toe without difficulty. He had mild difficulty squatting and hopping. Petitioner's range of motion was normal for the dorsolumbar spine, cervical spine, shoulders, elbows, wrists, hips, knees, ankles, hands and fingers. His motor strength and tone were normal, and he walked with a normal gait without the use of an assistive device.

A July 8, 2008 examination revealed that in an eight-hour work day, Mr. Badder can stand and walk less than two hours and sit less than six hours. He can usually lift and carry less than ten pounds, but can occasionally lift and carry ten pounds. The records also indicate that Mr. Badder needs no assistive device for ambulation, and he can use his extremities on a repetitive basis.

The hearing referee upheld the denial of Medicaid/SDA benefits because Mr. Badder failed to establish a disability. The referee applied the Medicaid five-step eligibility analysis pursuant to 20 CFR 416.920 and concluded that objective evidence failed to establish that, on the date of application, Mr. Badder had severe physical impairment that lasted or was expected to last for a continuous period of at least 12 months (for Medicaid) or 90 days (for SDA).

Objective medical evidence in the record established that Mr. Badder had a non-severe impairment of insufficient duration and that he had the functional ability to perform “sedentary/light/medium type work.”

Nothing in the record suggests that the decision was “arbitrary or capricious, was clearly an abuse of discretion, or was otherwise affected by a substantial and material error of law.” *Dignan*, 253 Mich App at 576. Further, as outlined above, the decision was based on competent, material and substantial evidence, which is “evidence that a reasoning mind would accept as sufficient to support a conclusion.” *Id.* Because the evidence was such that the agency could reasonably conclude that Mr. Badder failed to medically establish a disability to qualify for Medicaid/SDA benefits, we reverse the decision of the circuit court and remand for reinstatement of the agency decision. We do not retain jurisdiction.

/s/ Peter D. O’Connell  
/s/ Henry William Saad  
/s/ Jane M. Beckering