

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA11-1283

DAVID CASS

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered May 9, 2012

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[No. CIV-2010-3816-4]

HONORABLE JOHN R. SCOTT,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

David Cass appeals the order of the Benton County Circuit Court denying his petition for judicial review of the Department of Human Service's (DHS) denial of Medicaid benefits. Cass argues on appeal that the trial court's order must be reversed because (1) DHS failed to follow Social Security Administration procedures for determining disability for the purposes of Medicaid eligibility, (2) DHS did not afford Cass a fair hearing, and (3) the order is not supported by substantial evidence. Cass's first two arguments are not preserved for appeal; therefore, we cannot consider them. We affirm Cass's sufficiency-of-the-evidence challenge.

The Medicaid Program was created by federal law and is administered in part by the State of Arkansas through DHS. The program provides free medical assistance for indigent persons who are disabled. In April 2010, Cass applied for benefits. On August 3, 2010, DHS's Division of County Operations (DCO) issued a denial of Cass's application. In its denial,



DCO stated that it had considered Cass's medical information,¹ age, education, training, and other work experience. DCO also took into consideration the determination of the Medical Review Team (MRT) that Cass was "not disabled because [his] impairment is not severe enough to limit [his] ability to do basic work activities." Cass filed an appeal of the DCO denial, requesting an administrative hearing.

On November 16, 2010, a DHS review officer conducted a telephone hearing. Cass, then sixty years old, testified that he was a licensed attorney in Texas and Nevada; however, he had not worked since 2002 because of his medical condition.² According to Cass, he had suffered from chronic-fatigue syndrome since 1985, which caused him to be tired and have generalized pain.³ He added that chronic-fatigue syndrome is associated with viruses, one of which attacked his stomach and colon in the early 1990s, causing reflux and blockages. He also said that he suffered from lymphedema in both legs, which restricted his walking, and prostate problems that caused him to have the urge to void frequently. He had surgery for this condition in February 2010, which was "partially successful." Cass also complained that he was unable to sleep and that he had been prescribed medications for pain, sleeping, high blood pressure, vitamin deficiencies, and lymphedema. Based on these ailments, Cass claimed that he was extremely limited physically and was only able to sit, eat, and watch television. He

¹The medical information included medical records relating to Cass's bladder dysfunction, venous insufficiency, chronic-fatigue and chronic-pain syndromes, and lymphedema.

²Cass's wife, Kim, also testified, corroborating Cass's testimony that he could not work because of his medical condition.

³Cass told the review officer that since 1988 he had received disability benefits from the State of Nevada (\$1275/month) due to his chronic-fatigue-syndrome diagnosis.



added, however, that he was able to drive short distances.

On November 17, 2010, the DHS review officer entered an order denying Cass's request for Medicaid benefits and concluded that Cass failed to prove that he was disabled. In the order, the review officer cited MRT's determination that Cass was not disabled because he did not have a severe impairment.

Cass appealed to the Benton County Circuit Court on December 22, 2010, by filing a petition for judicial review under the Administrative Procedure Act. He argued that there was a lack of substantial evidence supporting the review officer's denial of benefits, that the decision was arbitrary, capricious, or characterized by abuse of discretion, and that the decision was deficient because DHS failed to comply with federal provisions for disability determinations.

The trial court entered an order on August 22, 2011, affirming DHS's decision. The trial court found that there was substantial evidence supporting the decision and that it was not arbitrary, capricious, or an abuse of discretion stating, "There is a rational and reasonable basis for the initial decision and the subsequent affirmative decisions." This appeal followed.

Review of administrative-agency decisions by the appellate courts is limited in scope. *Ark. Dep't of Human Servs. v. Thompson*, 331 Ark. 181, 185, 959 S.W.2d 46, 48 (1998). The review is directed not to the decision of the trial court but to the decision of the administrative agency. *Id.*, 959 S.W.2d at 48. As with all appeals from administrative decisions under the Administrative Procedure Act, the appellate court may reverse the agency decision if it concludes that the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are not supported by substantial



evidence of record or are arbitrary, capricious, or characterized by an abuse of discretion. *Id.*, 959 S.W.2d at 48 (citing Ark. Code Ann. § 25-15-212(h)(5), (6) (Repl. 2002)).

To establish an absence of substantial evidence to support the decision, the appellant must demonstrate that the proof before the administrative tribunal was so nearly undisputed that fair-minded men could not reach its conclusion. *Williams v. Scott*, 278 Ark. 453, 455, 647 S.W.2d 115, 116 (1983). The question is not whether the testimony would have supported a contrary finding, but whether it supports the finding that was made. *Id.*, 647 S.W.2d at 116. An administrative decision should be reversed as arbitrary and capricious only when it is not supportable on any rational basis, not simply because the reviewing court would have acted differently. *Barnes v. Ark. Dep't of Fin. & Admin.*, 2012 Ark. App. 237, at 7, 419 S.W.3d 20, 24. Determining whether the agency's decision was arbitrary or capricious involves a limited inquiry into whether it acted with willful and unreasoning disregard of the facts and circumstances of the case. *Id.*, 419 S.W.3d at 24.

Finally, for purposes of judicial review, we have described the considerable deference to be given to an agency decision:

We have recognized that administrative agencies are better equipped than courts, by specialization, insight through experience, and more flexible procedures to determine and analyze underlying legal issues affecting their agencies, and this recognition accounts for the limited scope of judicial review of administrative action and the refusal of the court to substitute its judgment and discretion for that of the administrative agency.

Thompson, 331 Ark. at 185, 959 S.W.2d at 48–49 (citing *Wright v. Ark. State Plant Bd.*, 311 Ark. 125, 130, 842 S.W.2d 42, 45 (1992)). Moreover, an administrative agency, like a jury, is free to believe or disbelieve any witness. *Williams*, 278 Ark. at 455, 647 S.W.2d at 116. We



give the evidence its strongest probative force to support the administrative decision. *Id.*, 647 S.W.2d at 116.

Cass's first two arguments on appeal are that reversal is appropriate because DHS failed to follow the Social Security Administration's step-by-step procedure for determining Medicaid disability and that DHS did not afford Cass a fair hearing when it arbitrarily denied his disability application. However, Cass did not argue either of these points to the DHS review officer.⁴ It is well settled that an appellant may not change the grounds for an appeal but is limited by the scope and nature of his objections and arguments presented at trial. *City of Benton v. Ark. Soil & Water Conservation Comm'n*, 345 Ark. 249, 259, 45 S.W.3d 805, 812 (2001). Moreover, "[i]t is essential to judicial review under the Arkansas Administrative Procedure Act that issues must be raised before the administrative agency appealed from or they will not be addressed by this court." *Id.*, 45 S.W.3d at 812. Accordingly, because Cass failed to present these arguments to DHS, they are not preserved for appeal.

Regarding Cass's challenge to the sufficiency of the evidence, he contends that he presented substantial evidence—testimony from him and his wife and medical records—demonstrating that he suffers from a combination of medical conditions that cause him to be disabled and unable to work. We acknowledge this evidence; however, our standard of review requires us to determine whether there is substantial evidence to support DHS's decision to deny benefits to Cass. We hold that there is such evidence. In a medical

⁴The first time Cass argued that DHS failed to follow the Social Security Administration's procedure for determining Medicaid disability was to the trial court. Cass raises the lack-of-a-fair-hearing argument for the first time to this court.



report dated January 11, 2010, Dr. R. David Cannon, who treated Cass for chronic-pain and chronic-fatigue syndromes, stated that Cass's current medical regimen was working well, that he was having no side effects or sedation, and that he was having relief of his pain. Further, Dr. Cannon reported that Cass was having "significant improvement in his quality of life," despite some limited physical activity. The information about Cass's condition and prognosis contained in Dr. Cannon's record differs significantly from the testimony of Cass and his wife. The conflict between the two is for the agency to resolve. An administrative agency, like a jury, is free to believe or disbelieve any witness. *Williams*, 278 Ark. at 455, 647 S.W.2d at 116. Based on this evidence, we hold that a fair-minded person could reach the conclusion that Cass was not physically disabled. Accordingly, we affirm DHS's determination that Cass did not have a severe impairment, that he is not disabled, and that he is not entitled to Medicaid benefits.

Affirmed.

GLADWIN and WYNNE, JJ., agree.

Amy M. Pritchard, Legal Aid of Arkansas, for appellant.

Erasmio J. Reyes, Office of Chief Counsel, for appellee.