

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2628

IN THE MATTER OF:

Served November 14, 1984

Application of DAN JENKINS T/A )  
JENKINS TRANSPORTATION SERVICE )  
for a Certificate of Public Con- )  
venience and Necessity -- Special )  
Operations )

Case No. AP-84-30

By application filed June 21, 1984, as amended September 7, 1984, Dan Jenkins trading as Jenkins Transportation Service seeks a certificate of public convenience and necessity to conduct special operations, transporting transportation-disadvantaged persons 1/ together with their attendants and baggage in the same vehicle, between points in the Metropolitan District, excluding transportation originating in the Commonwealth of Virginia.

By Order No. 2570, served June 26, 1984, and incorporated herein by reference, and Order No. 2594, served August 10, 1984, Mr. Jenkins' application was scheduled for public hearing on September 7, 1984. Ironsides Medical Transportation Corporation and Mobile Care, Ltd., filed timely protests. Both protestants appeared at the hearing, cross-examined applicant's witnesses and presented evidence.

Mr. Jenkins testified on behalf of Jenkins Transportation Service ("applicant" or "JTS"). Since 1976, Mr. Jenkins has been transporting non-ambulatory participants in the District of Columbia's Medicaid Program. 2/ He conducts his current service using three vans.

---

1/ See Order No. 2015 served August 7, 1979, pp. 3-4.

2/ His authority from this Commission reads as follows:

SPECIAL OPERATIONS, round-trip or one-way, transporting persons confined to wheelchairs:

Between medical treatment facilities located in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District.

RESTRICTIONS: The service authorized herein is restricted to the transportation of non-ambulatory participants in the Medicaid program of the District of Columbia, and is further restricted to transportation in van-type vehicles specially equipped with ramps and mechanical devices for securing wheelchairs in transit.

All vans are equipped with tiedowns; one is equipped with an hydraulic lift. On an average day, all three vehicles are in use. However, Mr. Jenkins has excess capacity in the range of five to six passengers a day. If this application is granted, Mr. Jenkins will purchase an additional vehicle equipped with tiedowns and an hydraulic lift which he will use in combination with as many of the remaining vehicles as demand requires to provide his current and proposed services.

Mr. Jenkins employs two full-time drivers and drives full-time himself. If this application is granted, he intends to hire one additional full-time driver. Drivers are selected based on a review of their driving records. They then undergo a three-day training course. The drivers currently employed by Mr. Jenkins had experience working for a similar concern prior to coming to work for JTS. Drivers work eight hour shifts, so that routine service extends from 5:30 a.m. to 6:00 p.m. On cross-examination, Mr. Jenkins testified that he was not sure whether the Department of Human Services (DHS), from which he receives all his current passengers, considered his a twenty-four hour service. However, his intent is to provide service when people need it. He testified that response time to requests for same-day service varies but is usually one to two hours.

Before beginning service each day, JTS's drivers check oil, lights and brakes. Additional items are inspected weekly. Maintenance for all vehicles is and will continue to be performed by the dealer. A current certificate of insurance is on file with the Commission.

Applicant's balance sheet dated December 31, 1983, lists current assets of \$9,554 and fixed and other assets of \$9,375. Current liabilities are listed at \$3,526, with long-term obligations of \$4,298 and surplus of \$11,105. Applicant's operating statement for the 12 months ended December 31, 1983, indicates revenues of \$111,054 and expenses of \$82,229, for an operating ratio of 74 percent. Mr. Jenkins's income statement for the first 12 months of operations for the proposed service estimates revenues of \$20,000 from the proposed service for additional operating income net of taxes of \$9,400. According to Mr. Jenkins, this figure is based on an estimate of two passengers per day at the proposed rate of \$25 for a one-way trip and \$40 for a round trip within the Capital Beltway.

Mr. Jenkins also testified regarding two additional provisions in his proposed tariff: an "additional manpower" charge and a cancellation charge. The additional manpower charge is directed to non-ambulatory passengers and is intended to cover moving such persons up and down steps. The cancellation fee would be charged if a passenger failed to cancel a request for service prior to arrival of JTS's vehicle. Mr. Jenkins agreed to file a revised tariff stating with specificity those circumstances in which the above charges would apply.

Finally, Mr. Jenkins testified that he has provided free service to persons who are "over-income" and, thus, ineligible for Medicaid assistance. According to applicant, such service is provided without charge pursuant to a "spend down" system whereby over-income persons who accumulate sufficient expenses regain Medicaid eligibility. According to Mr. Jenkins, he does not bill for this service. However, when the persons are recertified as Medicaid eligible, he takes them on as "standing" (regularly scheduled) passengers.

Yvonne Gilder Gary, director of resident services, Washington Center for the Aging, Washington, D.C., testified in support of the application. The Center is a long-term care facility housing 256 persons, 97 percent of whom are Medicaid eligible and 75 percent of whom are non-ambulatory. Ms. Gilder Gary, a licensed social worker, supervises transportation arrangements for the residents. She testified that between two and four trips per day at a minimum were arranged.

Transportation arrangements for Medicaid patients attending medical appointments are made through DHS which assigns a carrier. Mr. Jenkins has provided some of this service. She testified that Mr. Jenkins is prompt and reliable. His equipment is excellent, and his drivers handle patients with great care and consideration. She further testified that she has never had any problems with Mr. Jenkins as a provider of Medicaid transportation. However, she has had problems with other carriers assigned by DHS, including protestant Ironsides. According to the witness, Ironsides holds itself out as offering 24-hour service, yet there are long-standing difficulties in obtaining Saturday and evening service. Ms. Gilder Gary testified that she is presently looking for another carrier to provide transportation on Saturdays and in the evening.

"Private pay" patients attending medical appointments are transported by Huntemann's Ambulance Service, Inc. Ms. Gilder Gary testified that she uses Huntemann's because it is the only carrier on which she can depend. However, she needs an alternative service because Huntemann's is sometimes busy and cannot provide service. On cross-examination, she testified that she has never called Mobile Care for private patients and that she will not call Ironsides because its service is undependable.

Ms. Gilder Gary also testified that she needs transportation for all residents for recreational trips. She has a donated fund for that purpose and is looking for a carrier that will provide transportation at an affordable price. These needs are partially met through the D.C. Elderly Handicapped Transportation Service which, due to its mandate to provide medical transportation, is frequently unavailable or the D.C. Recreation Department when that agency has a vehicle available.

Eddie Rivas testified in support of the application on behalf of Prince George's County Department of Aging (the Department). Mr. Rivas is responsible for the total operations of the Department's transportation fleet. In this capacity, he has six administrative employees and 36 drivers under his supervision. Mr. Rivas is also unofficial liason to the Washington Metropolitan Area Transit Authority's Specialized Transportation Handicapped Advisory Committee and as such is familiar with Metro's transportation for the handicapped.

Mr. Rivas' Department provides transportation within the County for the elderly for medical, nutritional, social and recreational purposes. Through coordination with the Office of the Handicapped, it also transports handicapped persons regardless of age. Most persons transported are eligible for Medicare or Medicaid. Mr. Rivas testified that his agency is unable to provide transportation to the extreme north and south of the County. Certain pockets within the Beltway are also inadequately served. Mr. Rivas testified further that Metro's special services do not meet the needs of the elderly or handicapped in the County. In addition, the Department has little capability to transport the handicapped. Its one vehicle with an hydraulic lift can carry two wheelchair passengers. Because the Department has a mandate to hire retired persons, many drivers lack the necessary strength to help handicapped persons use conventional vans. According to Mr. Rivas, an additional carrier for these purposes would be useful.

In cases where the Department is unable to provide the requested transportation, persons are referred to other public agencies. If the person requesting transportation can afford it, or if Mr. Rivas knows, based on information provided him, that the usual public agencies cannot provide the required transportation, he refers the person requesting service to for-profit carriers. Although he usually does not hear about the outcome of these referrals, he was once informed that such transportation did not work out.

Aviva Nebesky, a social worker with National Medical Care ("NMC"), a private, for-profit dialysis corporation, testified in support of the application. Ms. Nebesky is responsible for arranging thrice-weekly transportation between NMC treatment facilities and patients' residences for 114 patients, most of whom are on Medicaid. Forty percent of these patients are confined to wheelchairs; other patients need special assistance for different reasons. NMC has three locations, one in the District of Columbia and two in Prince George's County. Eighty to ninety percent of NMC's patients reside in the District of Columbia or Prince George's County. Mr. Jenkins currently provides transportation for some of these patients. Ms. Nebesky testified that she has observed applicant's vehicles which are equipped with seats and tiedowns, and they appear to be in good condition. She

has never known Mr. Jenkins or his drivers to be late or to fail to appear due to malfunctioning equipment. She spoke highly of applicant's drivers calling them ". . . two of the most magnificent gentlemen I have ever encountered". According to Ms. Nebesky, patients are full of praise for the drivers and for Mr. Jenkins himself.

Ms. Nebesky testified that Maryland Medical Assistance (Medicaid) patients are transported by carriers assigned by the county health departments. The carrier assigned to handle all NMC service for Prince George's County routinely requests a change of schedule whenever a patient has a 4:00 p.m. appointment. Such appointments require a pick-up at 8:00 or 9:00 p.m. Since a change of appointment is becoming increasingly difficult, this creates scheduling problems. By way of contrast, Ms. Nebesky testified that she knows Mr. Jenkins will pick up as early as 5:15 a.m. and routinely handles an evening session requiring a pick-up at 6:30-7:00 p.m., the last shift at NMC's Washington facility. He also transports standing patients during the weekend.

Within the District of Columbia, Ms. Nebesky uses a variety of carriers. Arrangements for use of Medicaid carriers must be made through DHS. She has never been told by DHS that no certificated carrier is available. However, she has been assigned a carrier which does not pick up at the hour service is needed. She further testified that in the District of Columbia an assigned carrier fails to appear once in ten days and carriers are more than one hour late for scheduled pick-ups on a daily basis. Ms. Nebesky has never used Mobile Care. Ironsides transports one NMC patient, and she finds that transportation to be adequate. Were it not for the Medicaid assignment system, she would use applicant for all transportation.

Ms. Nebesky testified that applicant transports passengers who are "over income" and "spending down" to reach the eligibility requirements of the Medicaid system. According to the witness, many of Mr. Jenkins' standing patients "go over-income" every six months during which time he transports them without charge until they become Medicaid-eligible again. Mr. Jenkins also transports non-standing over-income passengers without charge. According to Ms. Nebesky, applicant is the only carrier willing to do this. Although Mr. Jenkins submits a bill for these trips, the bill is never paid except in cases when a District of Columbia resident becomes Medicaid-eligible within the calendar month the trip occurred and the bill for the trip has not been submitted as one of the expenses which resulted in Medicaid eligibility.

On one occasion, Ms. Nebesky paid Mr. Jenkins for service rendered to an over-income patient. The payment (\$200 for two months) was provided through the American Kidney Foundation Patient Assistance

Fund. The patient lived in Prince George's County and was not eligible for Medical Assistance. No relative was available to provide transportation, and the patient was physically unable to drive herself. Ms. Nebesky testified that she contacted every transportation company she knew which might provide free transportation without success. Mr. Jenkins agreed to transport the patient for free. However, the witness offered to attempt to secure reimbursement for him and was successful in that attempt.

Margaret Pulley testified in support of the application on behalf of the Washington Home, Washington, D.C. Ms. Pulley is responsible for arranging recreational trips for residents. The trips which originate at the Home include points in the District of Columbia, northern Virginia and Montgomery and Prince George's County, Md. Approximately 80 percent of the persons taking the trips are non-ambulatory. Ms. Pulley testified that evening and weekend service is useful in scheduling such trips. On cross-examination, Ms. Pulley testified that Mobile Care provides evening and weekend service for residents, including non-ambulatory residents. She testified that she did not know whether Mobile Care has WMATC authority to transport ambulatory persons. 3/

Ms. Pulley has known the applicant for six years. Until two years ago, she used his service for residents' recreational trips. In four years, she used his service approximately 20 times at \$250 per trip. Upon both Ms. Pulley and Mr. Jenkins realizing that he was not authorized to provide service for non-Medicaid persons, the use ceased. She now uses Mobile Care to transport private patients. Mobile Care has been unable to provide service approximately twice in the past two years. One of those times was a Sunday, the other a weekday near Christmas. On both occasions, she was able to obtain substitute service but at a higher cost. Occasionally, she has trouble getting service on short notice.

Delores Davis testified in support of the application on behalf of Howard University Hospital, Washington, D.C. Ms. Davis has primary responsibility for arranging transportation for Medicaid patients between the hospital and points in the District of Columbia. She arranges between 150 and 200 trips per month, some of which are provided by applicant.

Ms. Davis has seen Mr. Jenkins' equipment and opines that it seems to be in good condition. His drivers are helpful and observant.

---

3/ In fact, Mobile Care's authority is limited to the transportation of non-ambulatory persons.

She testified that patients seem satisfied with Mr. Jenkins' service, and she has received no complaints regarding it. Ms. Davis has used Ironsides and finds its service good, when available. According to the witness, Ironsides is frequently booked on Sunday evening for the next day. She has never used Mobile Care as she does not believe it provides Medicaid services.

Ms. Davis does not arrange transportation for residents of Maryland or for non-Medicaid patients. However, she does receive calls regarding availability of transportation for such persons. In those cases, she makes referrals either to the Red Cross or to carriers on her Medicaid-approved list. She has never referred patients to Mobile Care because it is not on her list. She has referred patients to Ironsides. If Mr. Jenkins is granted authority, he would be one of the few carriers recommended for non-Medicaid patients. She would recommend him highly.

Kent Miller, owner and president of Mobile Care, Ltd., testified in opposition to the application. Mr. Miller purchased Mobile Care in June, 1984, after having been provided information regarding its activities for prior periods. For the 17-month period ending May 31, 1984, Mobile Care operated at 50 percent capacity, i.e., 181 trips per month. Although business has increased since June, Mobile Care is still operating at less than full capacity and would be able to take any additional business during the week if called. Mr. Miller testified that Mobile Care provides service until 10:00 p.m. by prior arrangement as well as weekend service. According to Mr. Miller, there have been times when, due to scheduling problems, Mobile Care has been unable to provide weekend service. In such cases, the company either recommends another carrier or asks the passenger to reschedule his appointment.

On cross-examination, Mr. Miller testified that his company owns four vans each with a capacity for four passengers. The fourth van was purchased in 1984. Mobile Care has authority to operate throughout the entire Metropolitan District. Although Mr. Miller had talked to a number of people regarding fare resistance and elasticity in the market in connection with a recently approved fare increase, he did no formal studies of those matters. Nor did he perform any traffic studies regarding the effect of a grant of general authority to Mr. Jenkins.

Richard N. Everett, owner and president of Ironsides Medical Transportation Corporation, testified in opposition to the application. Ironsides holds WMATC Certificate No. 31 authorizing specialized transportation for the handicapped including, but not limited to, Medicaid patients. Ironsides has four vans and authority to operate throughout the Metropolitan District. Mr. Everett testified that his

company currently operates at 60 to 75 percent capacity, answering 350 calls a month, 95 percent of which are for parties of one passenger each. According to Mr. Everett, the company responded to 500-600 calls per month two years ago. Although the number of Medicaid patients served by Ironsides during the past two years has increased slightly, the number of "private pays" served has decreased. Mr. Everett attributed this decrease to the provision of additional transportation by non-profit organizations within Montgomery and Prince George's Counties. However, on cross-examination Mr. Everett testified that he had recently lost a contract for the provision of service to and from the Veteran's Administration Hospital. He conceded that the loss of the contract was responsible for a large percentage of the decrease. Mr. Everett testified that his company provides service 365 days a year. Evening service is by appointment. If a driver can be located, the service will be provided. According to the witness, he has little trouble getting a driver during the weekend or at night. On the two or three occasions per month when the company is unable to provide service, it refers the passenger to Murray's Non-Emergency Transport Service or Mobile Care or asks the passenger to reschedule the service. Mr. Everett testified that last-minute doctor's appointments are usually the reason the company is unable to provide service because such occasions require that the passenger be picked up on time. According to Mr. Everett, there is "leverage" regarding pickup time for other reasons. For example, a person being discharged from the hospital may wish to leave at 10:00 a.m. When Ironsides is busy, an 11 a.m. pick-up will be arranged.

The protestants attempted to introduce a third witness, Rosetta Murray, owner and president of Murray's Non-Emergency Transport Service. Counsel for applicant objected on the grounds that Ms. Murray's proper role was that of a protestant. Following a proffer that Ms. Murray's testimony would concern the operations and capacity of her company, the objection was sustained.

In determining whether applicant has met the requisite burden of proof as set forth in Title II, Article XII, Section 4(b) of the Compact, we turn first to the issue of applicant's fitness both as to operations and compliance. Applicant currently holds authority to transport non-ambulatory D.C. Medicaid patients to and from medical facilities within the Metropolitan District. By his application, Mr. Jenkins seeks authority to transport transportation-disadvantaged persons throughout the Metropolitan District for whatever purpose transportation is required. If authority is granted, Mr. Jenkins will combine his present and proposed services. Mr. Jenkins has three vans equipped to provide this service. A fourth van is on order. The evidence indicates that the vehicles are regularly maintained and inspected. Applicant's drivers have experience and skill in providing transportation for the handicapped. A review of Mr. Jenkins' finances indicates a financially healthy carrier which can afford to expand services. For these reasons, we find the applicant financially and operationally fit to provide the proposed service.

The record reveals that Mr. Jenkins has provided service to persons who were ineligible for the D.C. Medicaid program. For the most part, such transportation was provided without charge. 4/ In certain instances, where Mr. Jenkins did receive payment for such trips, the payment issued pursuant to Medicaid regulations. Within the District of Columbia, a person is considered Medicaid-eligible for the entire calendar month in which eligibility is certified. Thus, if Mr. Jenkins provided "free" transportation to a passenger who was in the process of establishing or re-establishing Medicaid-eligibility, he may have received payment for such transportation as was provided during the month the certification became effective. 5/ Such payment is an internal part of the District's Medicaid system and, provided a carrier does not make retroactive payment a condition of transporting persons temporarily ineligible for Medicaid, does not constitute illegal operations. Mr. Jenkins also provided approximately 20 trips to D.C. residents for purposes other than medical appointments. The record further indicates that Mr. Jenkins was once compensated for transportation provided to a non-Medicaid passenger who resided in Prince George's County. The fact of this transportation raises a question as to whether Mr. Jenkins should be denied authority to perform the proposed service on grounds of compliance fitness. Illegal operations are not viewed lightly by the Commission, and, in addition to presenting grounds for denying a certificate, can constitute grounds for revoking one. The issue, however, is not whether illegal operations per se have been conducted but whether the applicant is fit, willing and able to conform to the provisions of the Compact and the rules, regulations and requirements of the Commission thereunder. In this respect, we note that applicant ceased offering transportation for recreational purposes to residents of the Washington Home when he realized that his authority did not extend to transportation of that sort and, perhaps more significantly, some two years prior to the filing of this application. As to the transportation provided the Prince George's County resident in order that she might obtain dialysis, had Mr. Jenkins received no payment for the transportation, no illegality would have been involved. We note that although Mr. Jenkins accepted payment, he did not make it a condition of transportation. Furthermore, the payment was not assured in advance and when received was nominal -- approximately eight dollars per trip

---

4/ This Commission has jurisdiction over transportation of passengers when that transportation is for hire. However, provision of "free" transportation, particularly by a for-hire certificated carrier, must be entirely bona fide in nature. Even if it is bona fide it has certain implications with regard to that carrier's rates and allowable expenses.

5/ Payment would have been rendered only if Mr. Jenkins submitted a bill and that bill did not constitute a "spend down" expense underlying recertification for Medicaid eligibility.

assuming three trips a week as is usual for dialysis patients according to Ms. Nebesky. Mr. Jenkins has been certificated by the Commission since 1977. Taking official notice of our records, we find that no formal complaints regarding illegal operations or violations of other Commission rules or regulations have been filed with this Commission. The record in this case indicates no pattern of deliberate violation of Commission rules, we find the applicant fit as to compliance. 6/

Based on a review of the evidence of record, we further find that applicant has proved that the public convenience and necessity require the proposed service. The testimony of Mr. Jenkins' public witnesses indicates that reliable Saturday and evening service for non-ambulatory and semi-ambulatory persons is lacking in Maryland and the District of Columbia and that there is a need for an additional carrier to serve handicapped persons in Prince George's County. The transportation needs testified to are not limited to persons eligible for Medicaid and include recreational as well as medical purposes. Protestants argue that because their companies are operating below full capacity, there is no need for additional service. However, the mere fact of excess capacity is not, without more, sufficient to rebut proof of need for proposed transportation. Mobile Care is authorized to transport handicapped persons throughout the Metropolitan District, restricted against transportation of persons within the District of Columbia Medicaid Program. Mobile Care's witness testified that it operates with excess capacity. Nevertheless, the company recently purchased additional equipment. This fact does not indicate a shrinking or even a static demand for the type of operations Mobile Care is authorized to conduct.

Ironsides is authorized to transport handicapped persons throughout the Metropolitan District, restricted only against sight-seeing and pleasure tours. The company owns four vans with which to perform this service. Ironsides' witness testified that the company is operating with excess capacity. That testimony is not rebutted, however. According to Ms. Davis, Ironsides is often fully booked for Monday by Sunday night. Ms. Gilder Gary testified that Ironsides is unreliable for evening and weekend service. The testimony also indicates that the quality of Mr. Jenkins service is superior to that of protestant Ironsides. Ms. Gilder Gary finds Ironsides so unreliable that she refuses to use it for transportation of non-Medicaid patients for whom she is free to choose a carrier. Ironsides own witness testified that the business which it refuses are instances for which

---

6/ Applicant is cautioned, however, that any future transgressions are likely to be viewed much more seriously.

pick-up at a specific time is required. When a passenger's time is considered to be flexible, the company often arranges transportation at a time other than requested or asks the patient to reschedule his appointment so as to coincide with the transportation Ironsides can provide. We do not doubt that there are peak periods for the transportation of handicapped persons even as there are for all other types of transportation. At such times, Ironsides can only offer transportation equal to its capacity. We note, however, that it is the public's convenience which is at issue here, not that of the carrier. The public is entitled to transportation when it is needed. We do not find it consistent with the Compact to deny certification to a carrier willing to offer transportation of high quality when evidence indicates that additional service is required and the services of existing carriers, while below capacity, have some deficiencies. Moreover, neither Ironsides nor Mobile Care has shown that their particular operations will be adversely impacted so as to deprive the public of service capabilities. In any event, we find that the benefit to the public from a grant of authority herein outweighs the harm, if any, which might be engendered thereby.

THEREFORE, IT IS ORDERED:

1. That Dan Jenkins trading as Jenkins Transportation Service is hereby granted a certificate of public convenience and necessity to conduct special operations transporting transportation-disadvantaged persons, together with their attendants and baggage in the same vehicles, over irregular routes, between points in the Metropolitan District, restricted against transportation originating within the Commonwealth of Virginia and further restricted to vehicles with a manufacturer's designed seating capacity of 15 passengers or less, including the driver.

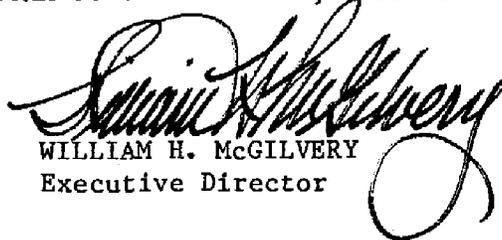
2. That Dan Jenkins trading as Jenkins Transportation Service is hereby directed to amend his tariff as discussed in the body of this order.

3. That Dan Jenkins trading as Jenkins Transportation Service is hereby directed to file two copies of WMATC Tariff No. 2 amended as directed in the preceding paragraph, such tariff to become effective upon acceptance by the Executive Director.

4. That unless Dan Jenkins trading as Jenkins Transportation Service complies with the requirement of the preceding paragraph within 30 days or such additional time as the Commission may direct,

the grant of authority contained herein shall be void, and the application shall stand denied in its entirety effective upon the said compliance time.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS WORTHY, SCHIFTER AND SHANNON:



WILLIAM H. MCGILVERY  
Executive Director