

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2649

IN THE MATTER OF:

Served January 10, 1985

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

Case No. AP-84-30

By Order No. 2628, served November 14, 1984, Dan Jenkins was granted a certificate of public convenience and necessity to transport transportation-disadvantaged persons, in special operations, over irregular routes, between points in the Metropolitan District subject to certain restrictions.

On December 14, 1984, protestants Mobile Care, Ltd., and Ironsides Medical Transportation Corporation filed an application for reconsideration of Order No. 2628, and on December 20, 1984, Jenkins filed his reply thereto. After careful review of the evidence and the contentions of the parties, we find that the application for reconsideration should be denied.

Protestants contend that Jenkins did not meet his burden of proving that the public convenience and necessity require the service authorized. In our view, however, the testimony of the public witnesses is sufficient to demonstrate a public need and demand for the proposed service. Protestants are also in error when they claim that an applicant has the burden of proving that a grant of authority would not ". . . be harmful to the protestants or the general public."

In determining the public convenience and necessity, this Commission has consistently followed the guidelines promulgated by the Interstate Commerce Commission in Pan-American Bus Lines Operations, I M.C.C. 190, 203 (1936):

The question, in substance, is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Yvonne Gilder Gary testified that Washington Center for the Aging needs transportation for non-medicaid patients and for recreational trips for all residents. Although she has never called Mobile Care for private patients, she has tried Ironsides and found it undependable. Eddie Rivas of the Prince George's County Department of Aging testified that there is a need for the transportation of handicapped persons that was not being met by public agencies. However, Mr. Rivas was not very familiar with the services of for-profit carriers including protestants. Aviva Nebesky has found existing transportation for Maryland Medical Assistance clients to be inadequate. She has never called Mobile Care and has no complaints about Ironsides.

Margaret Pulley of the Washington Home needs a carrier to transport both ambulatory and non-ambulatory persons on recreational trips. She has used Mobile Care to transport both categories of passengers although Mobile Care is not authorized to carry ambulatory persons. She has had trouble, on occasion, obtaining service on short notice. The main import of the testimony from Ms. Davis of Howard University Hospital is that Ironsides is sometimes booked to capacity and unavailable when needed.

In our view, the testimony summarized above establishes a prima facie case of public convenience and necessity. Protestants then bear the burden of going forward to show that their operations would be endangered contrary to the public interest. At best, protestants indicated that they might suffer some loss of revenues, but they did not prove that additional competition would be destructive or inimical to the public interest. Thus they have no basis for complaint. Cf. Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc., 419 U.S. 281, 297-98, 95 S.Ct. 438, 448, 42 L.Ed.2d 447, 462 (1974), Norfolk Southern Bus Corp. v. U.S., 96 F. Supp. 756, 761 (D.C.E.Va.), aff'd. mem., 340 U.S. 802, 71 S.Ct. 68, 95 L.Ed. 590 (1950), and Hilt Truck Line, Inc. v. U.S., 532 F.2d 1199, 1203 (8th Cir. 1976).

Protestants also contend that Jenkins should be found unfit because of unauthorized operations conducted in the past. Jenkins is certificated to transport ". . . non-ambulatory participants in the Medicaid program of the District of Columbia. . ." to and from medical treatment facilities. The gist of protestants' argument (to the extent it was not dealt with in Order No. 2628) is that transportation of so-called "spend-down" patients is unauthorized and billing therefor constitutes a fraud on the Medicaid program.

We are not prepared to find, on this record, that a person ceases to be a "participant" in the Medicaid program because, for some period of time, there is a hiatus in the participant's eligibility for benefits. To the extent that the record deals with this issue, it would appear that participants remain on the Medicaid roster during their "spend-down" period and that their eligibility for benefits is restored once they incur medical expenses (including transportation)

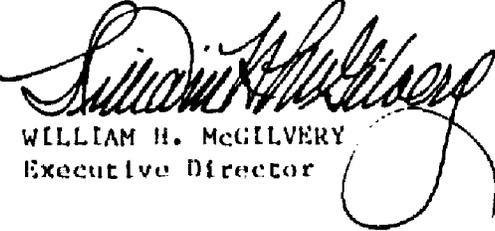
above some predetermined level. If Jenkins bills only for services actually performed, is denied payment by Medicaid and is then paid, in whole or in part, by the participant or some benefactor, we see no violation.

Certainly, Jenkins has engaged in unauthorized transportation. Apparently, Mobile Care has also conducted illegal operations. The Commission certainly does not condone such activities. Considering the nature and extent of the violations, that most had been discontinued some two years ago, the mitigating circumstances and the likelihood of repetition, we found that Jenkins' past indiscretions did not warrant a finding of unfitness. We hereby affirm that finding.

We have considered the other arguments raised by protestants and find them to be without merit.

THEREFORE, IT IS ORDERED that the application for reconsideration is hereby denied.

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

  
WILLIAM H. MCGILVERY  
Executive Director

