

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2898

IN THE MATTER OF:

Served August 21, 1986

Application of PERKINS AMBULANCE )  
AND WHEELCHAIR SERVICE, INC., for a )  
Certificate to Transport in Special )  
Operations Non-Ambulatory Persons )  
between Points in the Metropolitan )  
District )

Case No. AP-85-37

By application filed December 17, 1985, Perkins Ambulance and Wheelchair Service, Inc. ("PAWS" or "applicant"), seeks a certificate of public convenience and necessity to transport non-ambulatory persons in special operations, between points in the Metropolitan District, 1/ as follows:

The transportation of non-ambulatory persons between points in the Metropolitan District. Each vehicle will be equipped with equipment which will handle emergencies and other extraordinary situations, including a hydraulic lift, wheelchair tie-downs, portable oxygen, a trauma kit, pressure cuff, stethoscope and cellular telephone. Each vehicle will be operated by an individual registered as an Emergency Medical Technician trained in the use of that equipment and in life saving techniques.

Notice of this application was duly published, and no protests were filed. A public hearing was held January 30, 1986, at which two witnesses testified on behalf of applicant, and three public witnesses testified in support of the application. The hearing was continued to February 27, 1986, at applicant's request in order that a representative of the District of Columbia Medicaid program might be subpoenaed to testify. On February 27, 1986, no request for subpoena having been made, applicant failed to produce a witness from the Medicaid program. Applicant rested, and a briefing date of March 28,

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1/ To the extent that this application could be construed to seek authority to transport passengers solely within the Commonwealth of Virginia, it was dismissed pursuant to the Compact, Title II, Article XII, Section 1(b) by Order No. 2810, served December 19, 1985, and incorporated herein by reference.

1986, was set. By petition filed March 20, 1986, applicant sought to reopen proceedings pursuant to Rule 27-01. Applicant's Petition to Reopen was granted, and, at a public hearing held April 29, 1986, a representative of the Department of Health Care Financing testified under subpoena.

#### SUMMARY OF EVIDENCE

Gregory R. Perkins, PAWS's president, testified that applicant is a District of Columbia corporation established to provide wheelchair and ambulance service throughout the Metropolitan District. Applicant formerly conducted the operations for which it here seeks authority. Upon being informed that a certificate issued by this Commission was required, PAWS ceased operations and has not operated wheelchair service in the District of Columbia or elsewhere since May 1985. Applicant proposes to transport non-ambulatory persons, *i.e.*, persons in wheelchairs because of their inability to walk or because it is difficult for them to walk any distance. The proposed service would differ from that provided by certificated carriers in three ways: (1) the use of Emergency Medical Technicians ("EMT's") as drivers; (2) the use of vehicles equipped with oxygen, trauma kits, and cellular telephones; and (3) the availability of extended hours of service, specifically from 6 a.m. to midnight.

PAWS would use two vans equipped with hydraulic lifts, wheelchair tie-downs, cellular telephones, portable oxygen, and a trauma kit containing a pressure cuff, stethoscope, splints, bandages, and oxygen mask. The vehicles are three to four years old and in good shape. PAWS's vehicles are registered in and have been inspected by the District of Columbia. Daily checks are made of oil, tires, and pressure. The vehicles are serviced monthly and repairs are made as needed. Perkins uses two mechanics regularly for maintenance and repairs. The vehicles have a manufacturer's designed seating capacity of eight passengers and are currently equipped with bench seats. If this application is granted, Mr. Perkins would have the vehicles equipped with three wheelchair tie-downs, leaving the front seats and a bench seating three persons. PAWS plans to add two vehicles outfitted for wheelchairs during the first year. The vehicles would be either purchased or leased using proceeds from the business.

The vehicles would be driven by EMT's who have taken defensive driving courses. EMT training consists of a six-week course offered by the Fire Department. The course trains persons to recognize life threatening situations and stabilize persons in those situations. Mr. Perkins testified that the primary purpose of his proposed service is transportation, and he anticipates that the majority of trips will be uneventful. However, he stated that availability of an EMT is particularly useful for kidney patients. Service would be available Monday through Saturday from 6 a.m. until 12 a.m. Sunday service would be provided by special appointment. Despite the fact that the "late

shift" at dialysis clinics extends from 5 p.m. to 10 p.m., Mr. Perkins is aware of no wheelchair van service that operates after 6 p.m. Persons assigned to that time now are transported by taxi, ambulance, or family members.

Applicant's proposed tariff indicates a one-way rate of \$25 for trips not over 15 miles and a round-trip rate of \$45 for trips not over 30 miles. A 20 percent discount would be offered to passengers using two or more round-trips a week. Where trips exceed 30 miles, PAWS would charge \$1.75 for each additional mile. Although the actual charge would be based on the odometer reading, an estimate would be given in advance. PAWS proposes a rate of \$30 for a one-way trip between any point in the Metropolitan District and Washington National Airport, and \$45 for a one-way trip between any point in the Metropolitan District and Washington Dulles International Airport. Charges for Medicaid passengers would not exceed the maximum rates established by the government agency requesting the services.

For the first 12 months of operations, PAWS projects revenues of \$192,000 based on eight passengers a day for each of two vehicles at \$40 per passenger. Expenses including two drivers and office personnel are projected to be \$132,720 resulting in net income, before taxes and adjustment for interest income, of \$59,280. From net income PAWS projects reserves of \$37,100 for new equipment, supplies, and contingencies. A balance sheet as of December 16, 1985, indicates current assets of \$28,000, fixed assets of \$19,000, total liabilities of \$2,044, and stockholders' equity of \$44,956. As of the date Mr. Perkins testified, applicant's financial condition was substantially unchanged.

In May 1984, applicant commissioned a marketing survey by the firm of Levi and Red Cross. The study dealt with wheelchair vans and ambulances. Methodology consisted of contacting approximately 60 hospitals and nursing homes throughout the metropolitan area. The results indicated a strong need for additional wheelchair van service. Several persons contacted said they had been dealing with carriers that were late, had breakdowns, or could not provide sufficient equipment. The transportation needed was scattered throughout the Metropolitan District. Based on the results of the survey and past experience, Mr. Perkins estimates that applicant will be required to carry eight passengers per day per vehicle including about eight airport trips a month.

Mr. Perkins is familiar with the Compact and the Commission's rules and regulations and is willing to comply with them.

Dwayne M. Jennings testified on behalf of applicant. Mr. Jennings is an EMT, most recently recertified in August 1985 in the District of Columbia. He would be employed by applicant as a driver. Mr. Jennings is familiar with the equipment on the vans and, as an EMT,

is qualified to operate it. Mr. Jennings has experience operating wheelchair vans, having been employed to do that work by the Northern Virginia Transportation Service and the Potomac and Economy Ambulance Service. Mr. Jennings is experienced in handling non-ambulatory persons and is available to work after 6 p.m. and on Sunday. It is Mr. Jennings opinion that a need exists for PAWS's service. The ambulance services for which Mr. Jennings previously worked terminated wheelchair service but continued to receive calls from doctors' offices and hospitals requesting such service where an ambulance "wasn't practical." In such cases an ambulance was dispatched even though a wheelchair van would have better suited the situation.

Denise Williams is employed by the Dialysis Division of National Medical Care which operates 18 dialysis units and is headquartered in Landover, Md. Ms. Williams is facility administrator of the Martin Luther King Dialysis Center ("MLK") and Greater Southeast Center for Renal Disease ("Greater Southeast"), both in Washington, D.C. She testified on behalf of those centers in support of the application. Ms. Williams' current duties include indirect patient care, support and ancillary services, accounts receivable, and technical aspects of programs at MLK and Greater Southeast. Ms. Williams was previously Director of Nursing at the Washington Hospital Center. In both her former and present positions, Ms. Williams was and is involved in patient transportation.

MLK has ten dialysis units enabling it to serve 60 patients, i.e., three shifts of ten patients, each of whom is dialyzed three times a week. Ten to 15 percent of MLK's patients are participants in the D.C. Medicaid program. Greater Southeast has 12 dialysis units enabling it to serve 72 patients, i.e., three shifts of 12 patients, each of whom is dialyzed three times a week. Seven patients at Greater Southeast are D.C. Medicaid participants. Patients at these facilities come from the District of Columbia and Prince George's County, Md. Both facilities are now almost full. Because there is a waiting list for the first and second shifts and priority is given existing patients, any opening is usually on the third shift which begins at 5:30 p.m. On that shift approximately three to five patients require transportation three times a week for dialysis at MLK or Greater Southeast. Ms. Williams knows of no carrier providing service after 6 p.m. Persons assigned the third shift are usually brought in by family members. If family support is lacking, the patient may not be brought in regularly, with resulting adverse health effects.

Ms. Williams testified that there is a need for wheelchair vans equipped with oxygen and personnel familiar with CPR. Many kidney patients are non-compliant with fluid restrictions, which can result in shortness of breath thereby necessitating oxygen en route to dialysis. Transient hypotension may occur 20 to 30 minutes after dialysis. When this occurs patients need oxygen and blood pressure monitoring and, on occasion, must be returned to the facility to be stabilized. Current carriers lack the equipment and skill to cope with such situations.

Ms. Williams has known Mr. Perkins since 1979 and used his service between 1979 and 1981. She found the service reliable and above average. She had no complaints about the service. Ms. Williams has never used applicant at MLK or Greater Southeast. On cross-examination, Ms. Williams testified that there was a problem arranging night transportation for both Medicaid and private patients. When night service is needed, Ms. Williams must use an ambulance service which requires payment in advance; transport the patient with a staff member by taxicab; or call the family who may not be able to arrive for several hours. A carrier for private patients is required three to four times a month. If Ms. Williams knew PAWS was available six days a week and by appointment on Sunday, she would recommend it to patients who do not currently use van service.

Gail Scott, social worker at the Wisconsin Avenue Nursing Home, Washington, D.C., testified on behalf of that institution in support of the application. The Home has 330 residents between ages 55 and 105, 90 percent of whom are either confined to wheelchairs permanently or require wheelchairs while in transit. Residents are evenly divided between private patients and Medicaid participants. Ms. Scott arranges all transportation for residents, generally involving visits to physicians' offices. However, it might include social functions. Destinations include points in the District of Columbia and Montgomery County, Md. For private patients, Ms. Scott uses Mobile Care, Ltd., and Ironsides Medical Transportation Corporation. The witness makes arrangements for Medicaid participants but is unable to choose a carrier; her request is filled by assignment by the Medicaid program.

Ms. Scott is familiar with PAWS's application and supports it because she has difficulty getting transportation for late appointments and on short notice. Ms. Scott has two patients who need regular transportation to a medical facility at 4 p.m. with return to the Home at 9 p.m., and she is unable to secure a carrier for that time. As a result, those patients must be transported by ambulance, a more expensive method. In order to use Mobile Care or Ironsides, Ms. Scott must book the transportation a week in advance. Because those carriers are often solidly booked, Ms. Scott is forced to cancel medical appointments for lack of transportation two to three times a month. Although Ms. Scott has not used its services for two years, applicant has a reputation for being reliable, punctual, and courteous, and Ms. Scott would use its services if this application is granted.

Janice Funderburk, home health coordinator in community health for Consumer Health Services of America ("CHSA"), Washington, D.C., testified on behalf of CHSA in support of the application. Ms. Funderburk also testified based on personal knowledge and experience as a nurse consultant for community residential facilities dealing primarily with care of the elderly. CHSA provides nursing and rehabilitation services for home-bound persons throughout the Metropolitan District, including transportation to medical

appointments. All clients see a physician every 30 to 60 days -- more frequently if the client is unstable. Clients are either non-ambulatory or have impairments which affect their ability to walk, thereby necessitating wheelchair-oriented transportation.

About 200 CHSA clients are Medicaid participants, and about 30 are private. Medicaid participants sometimes become private clients due to temporary ineligibility. Ms. Funderburk uses Murray's to transport private patients. However, she has no knowledge of any carrier willing to provide service after 6 p.m. On the other hand, she is aware of 15 persons who need transportation after 6 p.m. One of those clients, who is in critical condition, did not keep a physician's appointment due to lack of transportation. On a recent occasion, Ms. Funderburk was unable to arrange van transportation over the weekend and, as a result, a non-ambulatory individual was transported by ambulance.

Ms. Funderburk is familiar with PAWS's application and would use its service. The equipment in PAWS's van is important, e.g., many CHSA clients are on maintenance oxygen at home and provision of oxygen in the van allows them to conserve their own oxygen for use in the doctors' offices.

Ms. Funderburk also offers volunteer assistance to her church and to a general practitioner who sought her help when he discovered that many patients were not keeping appointments due to lack of transportation. Some people in both groups are confined to wheelchairs. She would recommend PAWS to those persons, some of whom need transportation after 6 p.m.

Janice Anderson, Chief of Programs, Operations and Research, Office of Health Care Financing, Department of Human Services of the District of Columbia, testified under subpoena issued by the Commission at applicant's request. Ms. Anderson's office is responsible for the operations of the Medicaid program in the District of Columbia. As a result, transportation of Medicaid patients, including those confined to wheelchairs, comes under her auspices. The District provides Medicaid patients with non-emergency transportation to medical appointments and for medical services when that transportation has been approved in advance. Prior approval may be obtained between 8:15 a.m. and 4:45 p.m. on a weekday. Persons confined to wheelchairs are transported as appropriate, i.e., by bus, taxicab, or wheelchair van. Because reimbursement is made to the transportation provider, not to the Medicaid participant, no statistics are available as to the number of persons confined to wheelchairs and being transported by a method other than the wheelchair vans. Fourteen WMATC-certificated wheelchair van carriers are enrolled with Medicaid as transportation providers.

Medicaid participants are assigned to a carrier by the following procedure. First, a physician determines the method of

transportation appropriate for the individual. If it is determined that a wheelchair van is needed, the physician's office requests that transportation by calling the District of Columbia's contractor responsible for the coordination of the van services. Standing patients, e.g., patients who are transported regularly to and from a dialysis facility three times a week, are assigned a new carrier once a month. Between 50 and 65 persons have regular Saturday appointments and are transported by four carriers. There are other trips on Saturdays. Transportation is also required on Sundays to accommodate persons discharged from hospitals, but Ms. Anderson knows of no carriers that provide transportation on Sundays. It is her opinion that although some certificated carriers refuse business after 5 p.m., most will provide it if a round-trip is involved. Ms. Anderson does not object to approval of PAWS, and if this application is granted, she would enroll it as a provider.

The Medicaid program has 98,000 participants and, during the year, about 80,000 receive some sort of service. Approximately one percent are confined to wheelchairs. Ms. Anderson testified that Medicaid's logs indicate that it receives an average of 1,547 requests a month for transportation in wheelchair vans. The witness was unsure whether those requests were for one-way or round-trips. However, Ms. Anderson submitted a late-filed exhibit showing that, for the first quarter of 1986, the District of Columbia Medicaid Program paid claims for an average of 134 one-way trips and 5,567 round trips per month.

#### DISCUSSION, FINDINGS, AND CONCLUSIONS

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 with regard to operations, finances, and compliance.

Applicant proposes to transport persons confined to wheelchairs in vehicles with wheelchair tie-downs and ramps or hydraulic lifts. The vehicles would be equipped with portable oxygen, a trauma kit, and a cellular telephone -- all for use in emergencies. The vehicles, which the record indicates are relatively new, in good condition, and regularly maintained, will be driven by persons experienced in driving similar vehicles and, by virtue of their training as EMT's, capable of using the emergency equipment and dealing with non-ambulatory persons in general. 2/ A review of PAWS's finances indicates a financially healthy corporation capable of implementing the proposed service. For these reasons, we find applicant financially and operationally fit.

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2/ Compare Order No. 1749, served September 16, 1977, at p.25.

Mr. Perkins admitted on the record that applicant previously performed similar service without authority from the Commission. The witness testified that, upon becoming aware that a certificate was required, PAWS ceased operating and filed this application. According to Mr. Perkins, applicant has performed no operations for over a year. Testimony by PAWS's public witnesses corroborated this assertion, and there is no evidence to the contrary on this record. Moreover, the record indicates that Mr. Perkins, applicant's president, is familiar with the Compact and the Commission's rules and regulations and is willing to comply with them. Accordingly, we find applicant fit as to compliance. In making this finding we note that the fitness showing is prospective in nature and is possible because applicant successfully overcame the presumption of lack of compliance fitness raised by evidence of unauthorized operations.

Based on a review of the evidence, we further find that applicant has proved that the public convenience and necessity require the proposed service. Representatives of National Medical Care, the Wisconsin Avenue Nursing Home, and Consumer Health Services all testified regarding the need for transportation of non-ambulatory persons principally for medical appointments. The witnesses were unanimous in their testimony that no carrier of private patients currently provided such transportation after 6 p.m., and that such transportation was regularly needed for dialysis patients. Such patients are often obliged to accept appointments late in the day which require return transportation at 9 or 10 p.m. Because dependable for-hire transportation cannot be found for these persons, they may have to miss or reschedule appointments. The representative of the Wisconsin Avenue Nursing Home finds that even if she calls more than a week in advance, carriers will cancel two or three times a month because they are overbooked. CHSA's representative also testified that transportation for private patients is inadequate.

Because the Office of Health Care Financing, Department of Human Services of the District of Columbia, has complete control over use of transportation for which it pays, we must look to the testimony of the witness representing that agency in determining whether there is a need for additional transportation of participants in the District of Columbia Medicaid program. The testimony of that witness was conflicting. We have resolved that conflict with regard to the number of Medicaid participants who need wheelchair transportation by giving greater weight to the evidence that was supplied after the hearing as a late-filed exhibit. This evidence was submitted after the witness had an opportunity to review and analyze records which she did not have with her at the hearing.

The District of Columbia arranges and pays for non-emergency transportation of Medicaid participants. Prior authorization is required and can be obtained only during normal business hours. For persons confined to wheelchairs and for whom a doctor determines that

transportation other than bus or taxi is required, transportation of the type proposed by applicant is made available. Currently 14 carriers are certificated to provide that transportation. Only four carriers provide Saturday service. No carriers are available on Sundays, and some refuse pick-ups after 5 p.m. Ms. Anderson testified that PAWS would provide a useful addition to existing service. The record indicates that the proposed service cannot or will not be provided as well by existing carriers. According to the evidence, applicant's vehicles will be better equipped than those of existing carriers, its drivers will be specially trained, and its hours significantly enlarged compared to those of most carriers providing service for participants in the D.C. Medicaid program. Because no certificated carriers appeared in opposition to this application, PAWS's evidence stands un rebutted. For these reasons, we find applicant's proof sufficient under the standards enunciated in Pan American Bus Lines Operation, 1 M.C.C. 190, 203 (1936).

One final matter remains. Rather than have the hearing closed on January 30, 1986, applicant sought a continuance to February 27, 1986, so it could subpoena a certain witness. However, applicant sought neither a subpoena nor a further continuance; the hearing was convened on February 27; and applicant then presented no substantial evidence. Pursuant to General Order No. 21, served October 3, 1983, applicant will be required to pay the Administrative Law Judge's fee for that hearing.

THEREFORE, IT IS ORDERED:

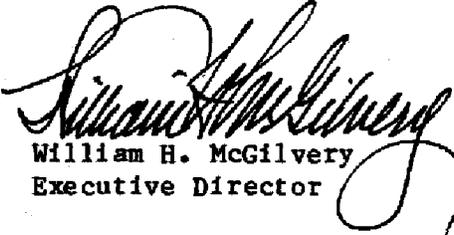
1. That Perkins Ambulance and Wheelchair Service, Inc., is hereby granted authority to transport persons confined to wheelchairs, including but not restricted to participants in the District of Columbia Medicaid Program, in special operations, over irregular routes, between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 persons or less including the driver and equipped with devices for the safe loading and unloading of persons in wheelchairs and with devices to secure wheelchair passengers in transit.

2. That Perkins Ambulance and Wheelchair Service, Inc., is hereby assessed \$125 pursuant to General Order No. 21.

3. That Perkins Ambulance and Wheelchair Service, Inc., is hereby directed to file within 30 days of the date of service of this order the following: (1) a certificate of insurance in accordance with Commission Regulation No. 62; (2) an affidavit of identification of vehicles in accordance with Commission Regulation No. 68 for which purpose WMATC No. 126 is hereby assigned; and (3) two copies of its WMATC Tariff No. 1.

4. That unless Perkins Ambulance and Wheelchair Service, Inc., complies with the requirements 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 expiration of the said compliance time.

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

  
William H. McGilvery  
Executive Director