

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3207

IN THE MATTER OF:

Served July 20, 1988

Application of MEDICO	)	Case No. AP-88-20
TRANSPORTATION SERVICES, INC., to	)	
Transfer Certificate No. 51 to	)	
HENRY L. EPPS, JR.	)	
MEDICO TRANSPORTATION SERVICES, INC.,)		Case No. MP-88-03
Suspension and Investigation of	)	
Revocation of Certificate No. 51	)	

By motion filed June 13, 1988, as supplemented June 23, 1988, Medico Transportation Services, Inc. (transferor), and Henry L. Epps, Jr. (transferee), request that Henry L. Epps, Jr., be granted temporary approval to operate Certificate No. 51 pending Commission determination of Case No. AP-88-20.

As grounds for the motion, counsel for the parties cites the Compact, Title II, Article XII, Section 12(d) which sets forth criteria applicable to temporary approval pending a consolidation, merger, or acquisition of control of a WMATC carrier by another carrier. Recognizing that Section 12 does not cover the issue at hand, counsel for the parties further cites Commission Rule No. 15 which provides that "[a] timely motion may be filed for any relief or action of the Commission for which no other pleading is available under these Rules."

The parties assert that temporary approval is required to ensure the future performance of adequate and continuous service under Certificate No. 51, the issuance of which creates a reasonable presumption of need for service. The parties admit that no operations have been performed pursuant to the certificate since February 1988. However, they argue that dormancy of the certificate should not be a concern to the Commission because negotiations for the sale of the certificate evidence viability and a perceived need for service. Without temporary approval transferee claims that he would experience diminished revenues due to the loss of patients who had been transported by Medico on a regularly-scheduled basis and loss of contacts with hospitals and other medical facilities. The parties claim that temporary approval would protect the traveling public which relies on timely transportation in the District of Columbia Human Services Medicaid program, against serious harm due to long term cessation of service.

In deciding requests for temporary approval to operate pending determination of a transfer application, the Commission, in past cases, has taken into consideration, among other things, whether failure to grant temporary approval would substantially interfere with the future performance of adequate and continuous service to the public. It has also looked to the fitness of the transferee to operate on even a temporary basis while considering whether the proposed transfer is consistent with the public interest. Case No. AP-86-40, Application to Transfer Certificate No. 86 from Nation's Capital Sightseeing Tours, a Partnership, to Ernest Harrelson, a Sole Proprietor.

There is no evidence contained in the record to support a claim that failure to grant temporary approval would substantially interfere with the future performance of adequate and continuous service to the public. Medicaid carriers are assigned on a rotational basis. The Commission takes official notice of the testimony in Case No. AP-88-07, Application of Care Access, Inc., for a Certificate of Public Convenience and Necessity to Conduct Special Operations proffered by Ms. Janice Anderson, Chief of Program Operations in Research, Office of Health Care Financing, Department of Human Services for the District of Columbia which describes how Medicaid carriers are assigned. Under that procedure the individuals who were transported by Medico on a regularly-scheduled basis would already have already been reassigned to other Medicaid carriers. We have no evidence that would convince us that these passengers would automatically be reassigned to transferee if temporary approval were granted.

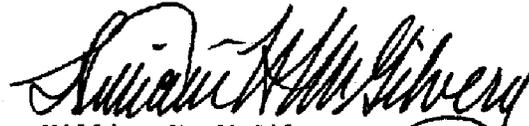
Certificate No. 51 has been suspended since February 29, 1988, on which date an investigation was instituted to determine whether that certificate should be revoked. See Case No. MP-88-03, Medico Transportation Services, Inc., Suspension and Investigation of Revocation of Certificate No. 51. The investigation was consolidated with the transfer application in Case No. AP-88-20 and set for hearing by Commission Order No. 3179, served June 15, 1988. A review of the contract of sale in the transfer application shows that the agreement is contingent upon approval of the transfer by the Commission, and upon acceptance of the transferee as a Medicaid carrier by the District of Columbia Office of Health Care Financing. (OHCF) The contract also provides that "[t]he Seller shall make application on or before May 9, 1988, to the WMATC for transfer of the certificate to Purchaser . . . ." The application to transfer Certificate No. 51 was filed May 26, 1988, several weeks after the time called for by the contract; there is no evidence of transferee's acceptance by OHCF. Moreover, Certificate No. 51 is suspended for failure to maintain appropriate insurance.

Due to the pending insurance investigation, concerns regarding the contract which provides the basis for the transfer application, and the lack of evidence that would support a finding that failure to award the parties' request for temporary approval would harm the future usefulness of the certificate we believe that all facts which should be

taken into consideration while reviewing a request for temporary approval are not known to the Commission, and, therefore, the request for temporary approval must be denied.

IT IS SO ORDERED.

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

  
William H. McGilvery  
Executive Director 