

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3375

IN THE MATTER OF:

Served July 11, 1989

Application of NORAL HARVEY Trading)
as HARVEY'S MEDIVAN SERVICES for a)
Certificate -- Special Operations)

Case No. AP-89-11

By application filed March 3, 1989, Mr. Noral Harvey, a sole proprietor trading as Harvey's Medivan Services seeks a certificate of public convenience and necessity to transport passengers in special operations, round trip or one way, between health care facilities in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District, restricted to vehicles with a manufacturer's designed seating capacity of fifteen persons or less, including the driver. */

A public hearing was held on Thursday, April 17, 1989, pursuant to Order No. 3300, served March 10, 1989, and incorporated herein by reference. Mr. Noral Harvey testified on his own behalf and presented two public support witnesses. No protests were filed.

SUMMARY OF THE EVIDENCE

Mr. Noral Harvey formerly held WMATC Certificate No. 52 which authorized the transportation of non-ambulatory participants in the D.C. Medicaid program in special operations between medical treatment facilities in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District. Transportation was restricted to vehicles specially equipped with ramps and mechanical devices for securing wheelchairs in transit. Certificate No. 52 was revoked by Commission Order No. 3175, served May 31, 1988, for failure of Mr. Harvey to file an appropriate certificate of insurance pursuant to Commission Regulation No. 62. Mr. Harvey testified that an error made by his insurance carrier resulted in the lack of proper renewal and filing of his insurance certificate. Mr. Harvey realizes that it is his responsibility to comply with WMATC requirements and made assurances that he would take special care to read Commission orders and to abide by them in the future. Applicant ceased operations and does not currently perform any transportation services. He testified

*/ To the extent the authority sought could be construed to include transportation solely within the Commonwealth of Virginia, the application was dismissed pursuant to the Compact, Title II, Article XII, Section 1(b). See Order No. 3300, served March 10, 1989.

that he is willing to comply with the Compact and Commission rules and regulations and with the United States Department of Transportation safety regulations.

In this application Mr. Harveys seeks authority to transport Medicaid as well as private-pay individuals to and from medical treatment facilities located throughout the Metropolitan District. Applicant would transport ambulatory and non-ambulatory persons. The proposed operations would be conducted in two 12-passenger (including the driver) vans that are wheelchair-equipped and have fire extinguishers. The vehicles can transport two wheelchairs and about four ambulatory persons. When the vehicles are used exclusively for ambulatory persons, Mr. Harvey can transport eleven individuals at one time. Applicant currently has the vehicles and plans to acquire additional equipment for back-up purposes.

In addition to acting as a part-time driver, Mr. Harvey plans to employ one additional driver. As operations develop, another driver would be hired. When seeking drivers the witness looks for individuals with good driving records, knowledge of the city, and the ability to deal effectively with the public. Newly hired drivers would undergo a four-week training program accompanying an experienced driver. Mr. Harvey also plans to hire an individual to answer phones.

Applicant's hours of operations would be 6 a.m. to 7 p.m., Monday through Saturday. Mr. Harvey would also provide transportation on Sunday if called upon to do so. Applicant proposes to charge the following rates:

	<u>Non-Medicaid</u>
Round trips	\$55.00 */
One-way trips	35.00 */
Cancellation	7.50
Each additional man	10.00

*/ plus 75¢ per mile beyond the Capital Beltway.

The \$10 charge for each "additional man" represents the rate charged by the carrier for providing an attendant. Applicant would require 24-hour advanced notice to accommodate transportation requests from private-pay individuals. For DHS Medicaid passengers, applicant would charge rates generally authorized by this Commission and paid by DHS for such services.

Mr. Harvey filed a revised statement of net worth as of April 30, 1989, which reveals current assets of \$1,900 and fixed assets of \$129,100. Mr. Harvey's current liabilities are listed at \$4,900 with long-term liabilities of \$62,400 and net worth of \$63,700. A revised projected annual operating statement estimates revenues of \$103,000 for both Medicaid and private-pay operations, with expenses of \$75,397, yielding an after-tax profit of \$27,603.

Mr. Anthony Eugene Shepherd testified in support of the application. Mr. Shepherd is employed as a work clerk unit secretary at the BMA of Capitol Hill Dialysis Center in Washington, DC. Mr. Shepherd's duties include making transportation arrangements for private-pay and Medicaid patients. The dialysis facility serves approximately 40 to 50 ambulatory and non-ambulatory patients daily. Ten to fifteen of those served are private-pay individuals. The patients require transportation from and to Prince George's and Montgomery Counties, MD, Northern Virginia, and Washington, DC. Mr. Shepherd would use applicant's services if authority is granted.

Ms. Janice Anderson, chief of program operations and research with the Office of Health Care Financing for the District of Columbia Department of Human Services, testified on its behalf. Ms. Anderson's office is responsible for the administration of the District of Columbia Medicaid program. Fourteen carriers currently provide transportation for program participants. The carriers operate under a rotation system that assigns work to a carrier based on its position in line. Medicaid recipients who require regularly-scheduled visits to health care facilities, however, are assigned one carrier for routine transportation. Ms. Anderson would use applicant's services and would have no objection to allowing the reentry of Mr. Harvey as a Medicaid carrier if applicant obtains appropriate WMATC authority.

DISCUSSION AND CONCLUSION

In determining whether to grant a certificate of public convenience and necessity, we look to Title II, Article XII, Section 4(b) of the Compact which requires that an applicant prove that he is fit, willing, and able to perform the proposed transportation properly and to conform to the provisions of the Compact and the Commission's rules, regulations, and requirements thereunder. Section 4(b) further requires that the applicant prove the proposed service is required by the public convenience and necessity.

Based on a review of the entire record in this case, we find that applicant is capable of providing the proposed service. Willingness and ability to comply with the rules and regulations of this Commission is an essential criterion examined by the Commission in determining whether a certificate of public convenience and necessity should issue. Applicant's certificate was revoked for failure to comply with Commission rules and regulations. However, the record convinces us that Mr. Harvey now intends to comply fully with all regulatory requirements. Applicant is an experienced Medicaid carrier and the proposed services would closely parallel those previously conducted by Mr. Harvey. Applicant is already in possession of two vehicles which are equipped for the transportation of both ambulatory and non-ambulatory passengers. Mr. Harvey plans to acquire a back-up vehicle. A review of the financial data indicates adequate financing to sustain the proposed operations.

We turn now to the matter of whether applicant has satisfied his burden of proving that the public convenience and necessity require the proposed service. The Commission has relied on the test enunciated in Pan-American Bus Line Operations (1 MCC 190, 203 [1936]) when interpreting this provision of the Compact. The Pan-American test consists of three parts as follows:

. . . 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 operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

A representative from the District of Columbia Medicaid program would use Mr. Harvey's service. The other witness presented by applicant testified that transportation of ten to fifteen private-pay passengers a day is needed to and from the BMA of Capitol Hill Dialysis Center. The testimony of record is not sufficient, however, to warrant a grant of authority to serve all medical treatment facilities located in the Metropolitan District. Therefore, the authority sought by applicant will be limited in accordance with the evidence presented.

Based upon consideration of all the evidence of record, we find applicant has met his burden of proving that the proposed service, to the extent authorized, will serve a useful purpose, responsive to a public need. No protests were entered, and we conclude that applicant's proposed service will not materially affect the operations of existing carriers.

THEREFORE, IT IS ORDERED:

1. That Noral Harvey trading as Harvey's Medivan Services is hereby conditionally granted authority, contingent upon timely compliance with the requirements of this order, to (A) transport passengers confined to wheelchairs, in special operations, between medical treatment facilities located in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District; restricted to transportation of non-ambulatory participants in the Medicaid program of the District of Columbia and further restricted to transportation in vehicles specially equipped with ramps and mechanical devices for securing wheelchairs in transit, and (B) transport passengers, in special operations, between the BMA (Bio-Medical Applications) of Capitol Hill Dialysis Center, 900 M Street, S.E., Washington, DC, on the one hand, and, on the other, points in the Metropolitan District. Restricted in both A and B to transportation in vehicles with a manufacturer's designed seating capacity of 15 passengers or less, including the driver, and further restricted against transportation solely within the Commonwealth of Virginia.

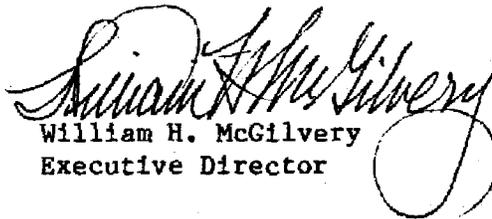
2. That Noral Harvey trading as Harvey's Medivan Services is hereby directed to file with the Commission the following: (a) two copies of its WMATC Tariff No. 1; (b) an equipment list specifying make, year, model, serial number, seating capacity, license plate number, and jurisdiction for each vehicle to be used in WMATC operations; (c) a certificate of insurance in accordance with Regulation No. 62; (d) an affidavit of identification of vehicles pursuant to Regulation No. 67 for which purpose WMATC No. 52 is hereby assigned, and (e) evidence that the vehicles have been inspected and approved for the proposed service by the licensing jurisdiction.

3. That unless Noral Harvey trading as Harvey's Medivan Services complies with the requirements of the preceding paragraph within 30 days of the service date of this order, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

4. That upon timely compliance with the conditions set forth in the preceding paragraphs, Certificate of Public Convenience and Necessity No. 52 will be issued to Noral Harvey trading as Harvey's Medivan Services in the form and as worded in the Appendix to this order.

5. That the application, except to the extent granted herein, is denied.

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


William H. McGilvery
Executive Director

NO. 52

NORAL HARVEY

Trading as HARVEY'S MEDIVAN SERVICES

By Order No. 3375 of the Washington Metropolitan Area Transit Commission issued July 11, 1989;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order No. 3375;

THEREFORE, IT IS ORDERED that the said carrier is hereby granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privilege granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

-PART A-

SPECIAL OPERATIONS transporting passengers 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;

RESTRICTED in PART A to transportation of non-ambulatory participants in the Medicaid program of the District of Columbia and further restricted to transportation in vehicles specially-equipped with ramps and mechanical devices for securing wheelchairs in transit, and

FURTHER RESTRICTED against transportation solely within the Commonwealth of Virginia.

-PART B-

SPECIAL OPERATIONS transporting passengers between the BMA (Bio-Medical Applications) of Capitol Hill Dialysis Center, 900 M Street, S.E., Washington, DC, on the one hand, and, on the other, points in the Metropolitan District.

RESTRICTED in both PARTS A and B to transportation in vehicles with a manufacturer's designed seating capacity of 15 passengers or less, including the driver.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous, and adequate service to the public in pursuance of the authority granted herein, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of the certificate.