

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3508

IN THE MATTER OF:

Served June 1, 1990

JEYASINGH VEDAMUTHU Trading as)
MEDWHEELS for a Certificate of)
Public Convenience and Necessity)
Authorizing Special Operations)

Case No. AP-90-06

By application filed February 9, 1990, Jeyasingh Vedamuthu trading as Medwheels seeks authority to transport passengers in special operations between health care facilities in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District, 1/ restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 passengers or less (including the driver).

A public hearing on the matter was held March 29, 1990, pursuant to Order No. 3459, served February 16, 1990. Petitions in the nature of protests had been filed March 19, 1990, by J&B Transportation Company, Inc. (WMATC No. 45); Metro Medicab, Inc. (WMATC No. 46); P&T Transportation Co., Inc. (WMATC No. 47); Otis F. Smith trading as Speedy Transportation (WMATC No. 48); Ellis B. Harrison, Sr., trading as Area Transportation Company (WMATC No. 49); Henry L. Epps, Jr. (WMATC No. 51); Damon's Transportation Company, Inc. (WMATC No. 60); William C. Dye trading as W&D Transportation (WMATC No. 61); Battle's Transportation, Inc. (WMATC No. 62); and Ikard Transportation Service, Inc. (WMATC No. 164) (protestants). However, protestants did not appear at the hearing to cross-examine witnesses or present evidence in support of their protests, nor did they file briefs in opposition to the application.

On March 22, 1990, Jeyasingh Vedamuthu trading as Medwheels moved the Commission to amend his application to add a hyphen to his trade name, thereby making applicant's amended trade name Med-Wheels. At the hearing the motion was granted.

SUMMARY OF EVIDENCE

Mr. Vedamuthu is the former owner of a service station and currently works at the Washington Hospital Center where he is responsible for supervising the in-hospital transportation of persons in wheelchairs and stretchers. As a result of his four years at the

1/ To the extent this application could have been construed to include transportation solely within the Commonwealth of Virginia, it was dismissed pursuant to the Compact, Title II, Article XII, Section

service station and nine years at the Washington Hospital Center, he is familiar with the operation and maintenance of vehicles and the way to handle persons safely in wheelchairs.

Applicant would conduct the proposed service using two 1990 vans, each having a manufacturer's designed seating capacity of 15 passengers (including the driver) and modified to accommodate four wheelchairs and seven ambulatory passengers. The vans will be equipped with two sets of wheelchair clamps, four sets of wheelchair tie-downs, and safety belts for all passengers. In addition, each van will carry two wheelchairs owned by applicant, a fire extinguisher, and a first-aid kit. Each van also will be equipped with an hydraulic lift with manual back-up system. Applicant has made arrangements for scheduled vehicle maintenance with the service station formerly owned by him. The same service station will perform needed repairs. Both vehicles would be garaged off the street near his home. Each vehicle would serve as a back-up for the other until additional equipment is obtained. The vehicles will be owned by Mr. Vedamuthu.

Mr. Vedamuthu intends to offer service between 6 a.m. and 6 p.m., seven days a week. Service would be made available outside those hours upon advance request. All round trips would be completed regardless of the hour. For religious reasons, Mr. Vedamuthu will not work between sunset on Friday and sunset on Saturday. However, he will assure that patients are transported during that time.

Applicant intends to hire an office manager to oversee his company's day-to-day operations and one full-time driver. Mr. Vedamuthu will also drive for the company. Drivers will be required to have a chauffeur's license, to be familiar with the geography of the Metropolitan District, and to know how to transport wheelchair-bound passengers. Mr. Vedamuthu will train drivers regarding the use of various types of wheelchair restraints, use of the lift and manual back-up system, and safe methods of loading and unloading wheelchair-bound passengers. Drivers will perform a daily safety check of any vehicle driven and will be responsible for informing management of needed repairs.

With his application, Mr. Vedamuthu submitted a proposed tariff listing the following rates:

<u>MEDICAID</u>	
Round trip	\$35.00
One way	\$25.00
cancellation	\$ 7.50
each additional man	\$ 5.00 each way
\$1.50 per loaded mile beyond the Capital Beltway	
Waiting time - \$5.00 per 15 minute period	

NON-MEDICAID

Round trip	\$50.00
One way	\$30.00
cancellation	\$ 7.50
each additional man	\$10.00 each
each caretaker for passenger - one-fourth of passenger charge	
\$1.50 per loaded mile beyond the Capital Beltway	
Waiting time - \$5.00 per 15 minute period	

At hearing Mr. Vedamuthu testified that it was his intent to charge the District of Columbia Medicaid program the rate prescribed by the Commission. Mr. Vedamuthu testified that it was his understanding that the rate included a mileage charge of \$1.50 per loaded mile beyond the Capital Beltway. However, if the Commission's rate were actually 75¢ per loaded mile, he proposes to charge accordingly. The term "additional man" as used in applicant's proposed tariff refers to an employee of Mr. Vedamuthu riding with the driver and available to help passengers as needed. The term "caretaker" as used in the proposed tariff refers to an escort for one or more passengers provided either by the passengers themselves or by an organization acting on the passengers' behalf.

With his application Mr. Vedamuthu submitted a statement of net worth showing assets of \$236,000 and liabilities of \$93,500, resulting in net worth of \$142,500. At the time of hearing, Mr. Vedamuthu's net worth was unchanged. During the first 12 months of operations, applicant projects revenues of \$193,800 from the proposed service and concomitant expenses of \$181,700. Applicant has not yet purchased the vehicles he would use for revenue purposes; however, these will be financed over a five-year period. Projected revenue assumes two vehicles, each making eight round trips a day, six days a week, at an average charge of \$45 a trip.

Mr. Vedamuthu is familiar with the Compact and the Commission's rules and regulations, including its safety regulations, and intends to comply with them.

Ms. Janice D. Anderson, chief of program operations and research for the Office of Health Care Financing of the District of Columbia Department of Human Services (Medicaid program) testified under subpoena. The District of Columbia through the Medicaid program provides medically necessary services to District residents who are poor and disabled. Certain services, including medically necessary transportation for eligible recipients, are mandatory. Eligible persons have several forms of transportation available to them depending on their state of illness and capability to use certain types of transportation. Ambulatory persons are provided bus tokens. Taxicab service is arranged for persons whose physicians believe they cannot use the bus. Where necessary, non-emergency ambulance service is provided. For persons confined to wheelchairs, transportation in appropriately-equipped vans is arranged. For such persons the provision of transportation follows a three-step process. First, the wheelchair-bound persons's physician must attest to the fact that the

person needs to be transported by wheelchair van. Second, an authorization number is assigned that person for the specific trip at issue. Third, a van is dispatched upon the facility's request for transportation under that specific authorization number. Dispatching is done on a rotating basis by a subcontractor. Essentially, the District of Columbia Department of Human Services, through Ms. Anderson's office, approves use of van service for non-ambulatory participants in the Medicaid program, assigns a carrier to transport persons whose move has been approved, and pays for service rendered. The service is usually between points in the District of Columbia. However, if a participant in the Medicaid program requires service that either is not available or is inaccessible within the District of Columbia, residents are transported outside Washington, DC, to receive appropriate treatment. Such transportation includes trips to and from dialysis centers and nursing homes. Approximately 13 carriers currently are available to provide service in wheelchair vans for the Medicaid program. These carriers make about 6,000 trips a month. The Medicaid program's requirement for service of this type has been stable for about a year. Ms. Anderson believes that no excess capacity exists among certificated carriers. Moreover, her office continues to get complaints regarding late pick-ups and deliveries by existing carriers.

The Medicaid program is always receptive to new providers where those providers demonstrate sensitivity to and understanding of the needs of its clients and are interested in safety. Ms. Anderson believes that, if the Medicaid program gains increased access to carriers that provide good service, then, as in any other business, "bad" providers will eventually disappear, and "good" providers will remain.

Ms. Naomi Ellcock, director of nursing services at BMA - Anacostia, testified on behalf of that organization in support of the application. BMA - Anacostia is a dialysis center located in Northeast Washington, DC. Its total census is 60 patients, each of whom receives dialysis at the center three times a week. Approximately 60 percent of the patients receive payments through Medicaid. BMA - Anacostia's patients include ambulatory and non-ambulatory persons. Some patients are ambulatory when they arrive for dialysis but after treatment are in such a weakened condition that they require the use of a wheelchair. In these situations, the provision of a wheelchair by the carrier is appreciated. Both ambulatory and non-ambulatory clients are participants in the District of Columbia Medicaid program of the Department of Human Services; other clients (both ambulatory and non-ambulatory) pay for transportation of the type proposed through private sources. The majority of the transportation required is within or between Washington, DC, and Prince George's County, MD. However, because BMA - Anacostia has open admitting privileges for physicians, patients from throughout the Metropolitan District may use the clinic. In her position as director and as a nurse at BMA - Anacostia, Ms. Ellcock must often determine whether and what type of transportation a patient might need to and from the center and arrange that transportation. If this application were granted, BMA - Anacostia would use Mr. Vedamuthu's service.

Ms. Susan Harrison, director of nursing at BMA - Columbia Heights (BMA - CH), testified on behalf of that facility in support of the application. 2/ Although BMA - CH's social worker handles the details of arranging transportation, Ms. Harrison is involved with the clinical aspect of that work and is familiar with the patients who need transportation. BMA - CH is a kidney dialysis facility located in Northwest Washington, DC. It has a total census of 122 patients, each of whom requires treatment three times a week. The average daily census is 55. Approximately 20 percent of BMA - CH's clients receive medicaid or medical assistance. Approximately one-third (20 percent of whom use a private carrier on a regular basis) pay for transportation exclusively through private sources. The remainder are over 65 years old and enrolled in Medicare with Medicaid as a secondary insurer. Clients include both ambulatory and non-ambulatory persons. The majority of clients reside in Washington, DC, or Prince George's County, MD. However, because the possibility exists of acquiring clients from other portions of the Metropolitan District, Ms. Harrison supports a grant of operating authority for applicant throughout the Metropolitan District. Ms. Harrison believes the need for transportation of the type for which applicant here seeks authority is increasing due to an increase in the number of dialysis centers opened recently in the Washington area. If this application were granted, BMA - CH would use Mr. Vedamuthu's service. Ms. Harrison believes applicant's background at the Washington Hospital Center has given him an awareness of what is needed in caring for people who need transportation of the type proposed.

Dr. Philip Thompson, administrative director for the Family Health Clinic of Hadley Memorial Hospital, testified on its behalf in support of the application. The Family Health Clinic is Hadley Memorial Hospital's out-patient department. The hospital is located in Southwest Washington, DC. Dr. Thompson is a social worker and, as administrative director, oversees the Hospital's family health department, outpatient department, and social work program. Dr. Thompson testified that his position requires that he arrange transportation for some of the 700 patients seen at the clinic each month. The patients requiring transportation include both ambulatory and non-ambulatory persons; approximately half receive medical assistance of some sort including Medicaid; a significant portion of the patients have third-party commercial insurance. Approximately 25 percent of the patients require for-hire transportation. Most of these patients are participants in the Medicaid program. Approximately 20 percent of those requiring transportation are non-ambulatory. If Mr. Vedamuthu's application were granted, Dr. Thompson would recommend his service to those persons at the hospital who require it.

2/ BMA stands for Bio Medical Applications. BMA - Columbia Heights is "part of" a larger corporation, "National Medical Care." That corporation has numerous facilities within the Metropolitan District, one of which is BMA - Anacostia. Ms. Harrison could not describe the corporate structure in any detail and did not know whether BMA - Columbia Heights was a wholly-owned subsidiary of National Medical Care.

Ms. Delila McKnight testified in support of the application. Ms. McKnight is a kidney dialysis patient. She is a participant in the District of Columbia Medicaid program of the Department of Human Services. Although ambulatory, it would be to her advantage to have access to a transportation company that provides wheelchairs after dialysis because that treatment leaves her very weak. She would like to use applicant's proposed service. She believes Mr. Vedamuthu is sufficiently experienced to understand the condition of patients immediately after dialysis and would feel comfortable using him if he were granted operating authority. Although she resides in the District of Columbia, Ms. McKnight has been receiving dialysis at the Metropolitan Dialysis Center, Hyattsville, MD, for three years.

DISCUSSION AND CONCLUSIONS

In determining whether to grant a certificate of public convenience and necessity, the Commission is governed by the standards enunciated at Title II, Article XII, Section 4(b) of the Compact which provides:

. . . the Commission shall issue a certificate . . . if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity

Based on a review of the record in this case, the Commission finds applicant to be capable of providing the proposed service and willing to conform to the Compact and the rules, regulations, and requirements of the Commission thereunder.

Applicant proposes service in new vehicles appropriately modified for the transportation of non-ambulatory persons together with ambulatory persons. Mr. Vedamuthu has made arrangements for regularly scheduled maintenance and repairs to the vehicles as well as daily safety inspections and garaging. Drivers will be trained and supervised. Applicant's financial evidence indicates sufficient capital to enable him to begin conducting the proposed operations and to cover the short-term financial losses that typically accompany a business's infancy. Mr. Vedamuthu is familiar with the Compact and the Commission's rules and regulations, including its safety regulations, and intends to comply with them.

In determining 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 Lines Operation (1 MCC 190, 203 [1936]) and its progeny. The Pan-American test consists of three parts as follows:

. . . whether the new operation or service will serve public purpose, responsive to a public demand or need 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.

Applicant produced five public witnesses. Based on their testimony, the Commission finds Mr. Vedamuthu has proved that his service as proposed meets an expressed public need, thereby serving a useful purpose, between all points in the Metropolitan District with appropriate restrictions.

Applicant's public witnesses represented the government agency controlling transportation (for medical purposes) of wheelchair-bound passengers participating in the Medicaid program; two dialysis centers in Washington, DC; a hospital also in Washington, DC; and an ultimate user of the proposed service. These five witnesses cumulatively require transportation of the type proposed hundreds of times each month. The persons for whom transportation is needed include non-ambulatory as well as ambulatory persons and persons who pay for transportation through the Medicaid program of the District of Columbia Department of Human Services as well as through private and other public sources. The testimony of these witnesses shows that existing transportation of the type proposed by applicant is needed throughout the Metropolitan District. Although protestants asserted otherwise in their protest, the record is devoid of any evidence to support their assertion or to rebut the evidence provided by applicant. Thus, based on the record in this case, the Commission finds that the public need for the proposed service will not be served as well by existing carriers as by applicant, and the operations of existing carriers will not be impaired contrary to the public interest.

THEREFORE, IT IS ORDERED:

1. That Jeyasingh Vedamuthu trading as Med-Wheels is hereby conditionally granted, contingent upon timely compliance with the terms of this order, authority to transport passengers in special operations between health care facilities in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District except transportation solely within the Commonwealth of Virginia, restricted to transportation of passengers in vehicles with a manufacturer's designed seating capacity of 15 passengers or less (including the driver) and further restricted to transportation of passengers in vehicles specially equipped with lifts or ramps and mechanical devices for securing wheelchairs and their occupants in transit.

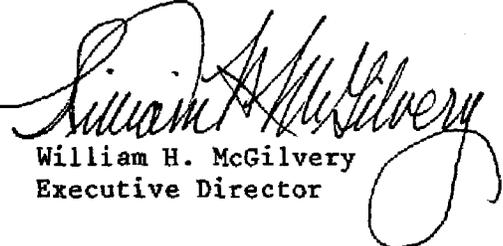
2. That Jeyasingh Vedamuthu trading as Med-Wheels is hereby directed, within 30 days of the service date of this order, to file with the Commission (a) two copies of his WMATC Tariff No. 1 amended to reflect, for Medicaid service, a rate per loaded mile beyond the Capital Beltway of 75¢, and in conformance with Commission Regulation

No. 55, but otherwise as proposed; (b) an equipment list indicating make, year, model, serial number, seating capacity and license plate number (with jurisdiction) for each vehicle to be used in revenue operations; (c) evidence of ownership or a lease in accordance with Commission Regulation No. 69 for each vehicle to be used in revenue operations; and (d) an affidavit of identification of vehicles pursuant to Commission Regulation No. 67 for which purpose WMATC No. 167 is hereby assigned.

3. That unless Jeyasingh Vedamuthu trading as Med-Wheels 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 contained 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 compliance with the conditions set forth in the preceding paragraphs, a certificate of public convenience and necessity will be issued to Jeyasingh Vedamuthu trading as Med-Wheels in the form and as worded in the Appendix to this order.

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


William H. McGilvery
Executive Director

NO. 167

JEYASINGH VEDAMUTHU

Trading as MED-WHEELS

By Order No. 3508 of the Washington Metropolitan Area Transit Commission issued June 1, 1990.

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. 3508;

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 herein 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

SPECIAL OPERATIONS, transporting passengers between health care facilities in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District,

RESTRICTED (1) to transportation in vehicles having a manufacturer's designed seating capacity of 15 passengers or less (including the driver), (2) to transportation in vehicles specially equipped with lifts or ramps and mechanical devices for securing wheelchairs and their occupants in transit, and (3) against transportation solely within the Commonwealth of Virginia.

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 to do so shall constitute sufficient grounds for suspension, change, or revocation of the certificate.