

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-548BP

IN THE MATTER OF THE APPLICATION OF MESA DEVELOPMENTAL SERVICES, FOR
AUTHORITY TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR
HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ANTHONY M. MARQUEZ
VACATING HEARING; GRANTING
JOINT MOTION FOR IMPOSITION
OF RESTRICTIVE AMENDMENTS
AND TO DISMISS INTERVENTION;
AND GRANTING APPLICATION
UNDER MODIFIED PROCEDURE**

Mailed Date: December 20, 2004

I. STATEMENT

1. This Docket concerns the Application to operate as a contract carrier by motor vehicle by Mesa Developmental Services (Mesa). Mesa filed the Application on October 26, 2004. After Commission notice of the Application, Tazco, Inc., doing business as Sunshine Taxi (Sunshine Taxi) intervened in this case and opposes Mesa's request. The Commission has set the Application for hearing on January 5, 2005.

2. Mesa is a Community Centered Board designated by the Colorado Department of Human Services, Division for Developmental Disabilities, and serves persons with developmental disabilities in group homes, host homes, and personal care alternatives. As a Community Centered Board, Mesa is responsible for delivering or ensuring appropriate care to its clientele, for example medical care. Many of Mesa's clients require assistance from its staff

in getting to and from medical appointments. In the Application, Mesa requests authority for its staff to transport its residential clients to and from their medical appointments in Mesa County, Colorado.

3. Specifically, Mesa's Application requested:¹

[A]uthority to operate as a contract carrier by motor vehicle for hire for the transportation of

passengers and their baggage

between all points in Mesa County, State of Colorado.

RESTRICTIONS: This application is restricted as follows:

- (I) To providing transportation services only for passengers who are clients of Mesa Developmental Services, 950 Grand Avenue, Grand Junction, Colorado 81501; and
- (II) To the Transportation of passengers who are recipients of Medicaid.

4. Sunshine Taxi owns and operates Certificate of Public Convenience and Necessity PUC No. 19429, and under that authority may transport passengers and their baggage in taxi, charter, and call and demand limousine service in all points in Mesa County, and between points in Mesa County, on the one hand, and all points in Colorado on the other hand. In its notice of intervention, Sunshine Taxi asserted that the authority requested by Mesa duplicated its authority. Further, Sunshine Taxi observed that the Application for contract carrier authority failed to identify a contracting customer, thereby, according to Sunshine Taxi, making the Application a request for common carrier authority.

¹ Commission Notice of Application Filed, dated November 1, 2004.

5. On December 15, 2004, Mesa and Sunshine Taxi filed their Joint Motion for Imposition of Restrictive Amendments and to Dismiss Intervention.² In the Joint Motion, Mesa agrees to modify the restrictions on the authority as originally requested in the Application. Specifically, Mesa now requests the following restrictions on the authority to be granted in this case:

To providing transportation services only for passengers who are developmentally disabled clients of Mesa Developmental Services, 950 Grand Avenue, Grand Junction, Colorado, 81501, who are recipients of Medicaid, for the purpose of attending medical appointments authorized by Mesa County Colorado Department of Human Services.

Mesa and Sunshine Taxi agree that the proposed restrictions are more restrictive in nature than the original language and urge the Commission to accept them.

6. If the Application is restrictively amended as state above, Sunshine Taxi agrees that it no longer opposes the Application and stipulates to dismissal of its intervention in this case.

7. In accordance with the provisions of § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record in this proceeding together with this recommended decision.

II. FINDINGS AND CONCLUSIONS

8. The Joint Motion is approved. First, the Joint Motion correctly states that the proposed restrictions on the Application are more restrictive in nature than the original language, are unambiguous, and are capable of enforcement. The proposed restriction clarifies that Mesa

² In Decision No. R04-1480-I (Mailed Date of December 14, 2004), the Administrative Law Judge directed Mesa to file certain information regarding its ability to proceed in this case without attorney representation. Notably, Mesa agreed to the Joint Motion through legal counsel. Furthermore, given the rulings in this Recommended Decision, the directives in R04-1480-I are now moot.

seeks contract carrier authority for the specific purpose of transporting: (a) its own developmentally disabled clients; (b) who are recipients of Medicaid; and (c) and who are going to or coming from medical appointments authorized by the Mesa County Department of Human Services.

9. The proposed restriction addresses the concerns raised in Sunshine Taxi's notice of intervention. That is, the proposal clarifies that Mesa does not seek common carrier authority, but seeks only to transport *its* own clients to and from medical appointments authorized by the Mesa County Department of Human Services. In light of the approval of the proposed restriction, Sunshine Taxi's stipulation to dismissal of its intervention is approved, and its intervention is now dismissed.

10. With dismissal of the intervention, Mesa's Application, as modified in the Joint Motion, is noncontested. Therefore, the Application may be considered under modified procedure pursuant to § 40-6-109(5), C.R.S., and Rule 24, Commission Rules of Practice and Procedure³ (*i.e.*, without a hearing).

11. The information presented in the Application and the Joint Motion warrants granting the authority requested by Mesa. In particular, that information indicates that a present and special need for the requested transportation service exists, and that the requested authority will not impair the efficient public service of any existing common carrier providing a similar service. Specifically, the Application indicates that Mesa's clients (*i.e.*, persons with developmental disabilities) require assistance from Mesa's staff during medical appointments.

³ 4 Code of Colorado Regulations 723-1.

As such, members of Mesa's staff accompany all clients on these appointments, and Mesa now seeks to have its staff transport residential clients to and from medical appointments.

12. Since this order grants Mesa's Application, the hearing scheduled for January 5, 2005 is vacated. Additionally, this order now vacates the filing requirements for Mesa discussed in Decision No. R04-1480-I (regarding legal representation of Mesa).

III. ORDER

A. The Commission Orders That:

1. The Joint Motion for Imposition of Restrictive Amendment and to Dismiss Intervention by Mesa Developmental Services, Inc. and Tazco, Inc., doing business as Sunshine Taxi is granted.

2. The Intervention by Tazco, Inc., doing business as Sunshine Taxi is dismissed.

3. The Application to Operate as a Contract Carrier by Motor Vehicle for Hire by Mesa Developmental Services is granted. Mesa Developmental Services, Inc. is granted authority to operate as a Class B contract carrier by motor vehicle for hire with authority as set forth in the Appendix to this Order. This Order is a PERMIT.

4. Mesa Developmental Services, Inc. shall operate in accordance with all applicable Commission rules and regulations.

5. Mesa Developmental Services, Inc. shall cause to be filed with the Commission certificates of insurance as required by Commission rules. Mesa Developmental Services, Inc. shall file a proper tariff and pay the issuance fee and appropriate annual vehicle identification fee. Mesa Developmental Services, Inc. may not begin operations until these requirements have

been met and it has received notice in writing from the Commission stating that it is in compliance and may begin service.

6. If Mesa Developmental Services, Inc. does not comply with the requirements of this Order within 60 days of its effective date, then the authority to conduct operations shall be void. For good cause shown, the Commission may grant additional time for completion if the request for additional time is filed within the 60-day period.

7. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

8. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

9. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

G:\ORDER\548BP.doc:srs