

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19V-0249EC

IN THE MATTER OF THE PETITION OF ELDERHAUS ADULT DAY PROGRAM INC.
FOR AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF THE RULES
REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6.

DECISION GRANTING WAIVER IN PART

Mailed Date: June 28, 2019
Adopted Date: June 6, 2019

I. BY THE COMMISSION

A. Statement, Findings, and Conclusions

1. This matter comes before the Commission for consideration of a Petition for Waiver/Variance of Regulated Intrastate Carrier Rules filed on May 10, 2019 by Elderhaus Adult Day Program Inc. (Petitioner).

2. Petitioner requests a waiver from Rule 6117(c) (Age of Motor Vehicle) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6.

3. The vehicle for which the waiver is requested is a 2001 Ford E-450, VIN No. 1FDXE45S71HA40687. The waiver is requested from May 15, 2019 through May 15, 2021.

4. The Commission noticed this petition to all interested persons, firms, and corporations pursuant to § 40-6-108(2), C.R.S., on May 20, 2019.

5. No petition to intervene or otherwise participate in this proceeding was filed. This proceeding is therefore uncontested. Pursuant to § 40-6-109(5), C.R.S., this matter may be determined without a hearing.

6. In accordance with Rule 1003 of the Rules of Practice and Procedure, 4 CCR 723-1, the Commission may grant waivers from Commission rules for good cause. In making a determination, the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.

7. Rule 6117(c) states:

With the exception of a luxury limousine which meets the definition of “collector’s vehicle” in subparagraph 6305(a)(IV), no motor vehicle operated under a Certificate or Permit shall be more than 15 years old regardless of condition or mileage.

8. The 2001 Ford E-450 named in this Decision is considered 17 model years old. Thus, unless Petitioner is granted a waiver from Rule 6117(c) for this vehicle, it may not provide transportation for hire service with this vehicle.

9. Petitioner currently has a Medical Client Transport Permit (MCT-0025) from the Commission. In support of the waiver, when identifying the reason for the petition, the Petitioner states:

Because the limitation on older vehicles is a new requirement with short notice, we are hoping a waiver will allow us time to make the transition. We are, to our knowledge, the last independent nonprofit adult day program in Larimer or Weld Counties. We provide compassionate and effective day programs 7:00 a.m. to 5:00 p.m. Monday through Friday for persons ages 18 and older with dementia, traumatic brain injuries, post-stroke needs, MS, Parkinson’s, Down syndrome, autism, and other intellectual/developmental disabilities. In many cases, our programs allow persons with special needs to continue residing at home for years longer, while benefiting from social engagement and active programs.

Due to the high cost of acquiring new non-CDL buses with wheelchair lifts, and the limited availability of suitable and affordable used vehicles that fall within the 15-year limitation, purchasing alternative vehicles on short notice is simply not

financially possible for us on short notice; and not being able to use our small buses will effectively shut down our entire program, leaving about 40 participants per day without the care they need (many of whom have no viable alternatives) and causing 25 Elderhaus staff members to lose their employment.

This vehicle, which we affectionately call “Coach”, passed a stringent PUC/DOT inspection (photo attached) effective January 1 of this year (2019). We just replaced its wheelchair-accessible lift for mobility-impaired participants in February 2019, with related costs totaling \$3,758.44. We also installed a new battery on 12/27/2018 (\$314.90) and new engine gaskets on 2/13/2019 (\$704.44). Like all our vehicles, this one is well-maintained, although the years have taken their toll on its outward appearance.

10. The Commissioners considered the matter to include, the type of vehicle, the financial hardship described by the Petitioner, the type of service provided by the Petitioner, the overall safety of the vehicle, the length of the waiver request, and the Commission’s past actions on these types of waivers.

11. In consideration of the support submitted with this petition, the Commission finds that good cause has been shown to grant a waiver of Rule 6117(c) (Age of Motor Vehicle) for the 2001 Ford E-450 named in this Decision.

12. The Petition is granted from the mailed date of this Decision, through May 15, 2021.

II. ORDER

A. The Commission Orders That:

1. The petition of Elderhaus Adult Day Program Inc. for a waiver from Rule 6117(c) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, is granted from the mailed date of this Decision through May 15, 2021.

2. Elderhaus Adult Day Program Inc. shall have the 2001 Ford E-450 named in this Decision inspected in accordance with Rule 6117(d). These inspections must meet standards as set by Rules 6103 and 6104.

3. Elderhaus Adult Day Program Inc. shall keep a copy of this Decision in the 2001 Ford E-450 named in this Decision. Elderhaus Adult Day Program Inc. shall ensure that this Decision is provided immediately upon request by any Commission enforcement official.

4. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails this Decision.

5. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 6, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners