

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0554BP

IN THE MATTER OF THE APPLICATION OF DISABILITY SERVICES, INC., DOING
BUSINESS AS AMBLICAB, FOR A PERMIT TO OPERATE AS A CONTRACT CARRIER
BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTIONS; AMENDING
APPLICATION, SUBJECT TO CONDITIONS;
DISMISSING INTERVENOR; GRANTING
APPLICATION, AS AMENDED, UNDER
MODIFIED PROCEDURE AND SUBJECT TO
CONDITIONS; AND GRANTING CONTRACT
CARRIER PERMIT, SUBJECT TO CONDITIONS**

Mailed Date: August 21, 2014

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I. STATEMENT

1. On May 29, 2014, Disability Services, Inc., doing business as Amblicab (Amblicab or Applicant), filed a verified Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire. Attached to the filing are several documents. That filing commenced this Proceeding.

2. On May 30, 2014, Applicant filed a supplement to the May 29, 2014 filing. On June 10, 2014, Applicant filed an amendment and a second supplement to the May 29, 2014 filing. Unless the context indicates otherwise, reference in this Decision to the Application is to the May 29, 2014 filing as amended and supplemented on May 30 and June 10, 2014.

3. On June 2, 2014, the Commission issued its Notice of Applications Filed (Notice) in this Proceeding (Notice at 4); established an intervention period; and established a procedural schedule. On July 15, 2014, Decision No. R14-0819-I vacated the procedural schedule.

4. On July 2, 2014, Colorado Springs Transportation, LLC (CST), timely intervened as of right. CST is a party in this Proceeding and opposes the Application.

5. CST is the Intervenor. Applicant and Intervenor, collectively, are the Parties. Each party is represented by legal counsel.

6. On July 9, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

7. On July 9, 2014, by Minute Order, the Commission deemed the Application complete as of that date. Absent an enlargement of time by the Commission or Applicant's waiver of the statutory provision, a Commission decision on the Application should issue not later than March 4, 2015.

8. By Decision No. R14-0819-I, the ALJ required Applicant to make, not later than August 1, 2014, a filing that addressed the issues identified in that Interim Decision.

9. On August 1, 2014, the Parties filed (in one document) a Joint Notice of Settlement and Motion for Extension of Time to File Schedule. On August 4, 2014, by electronic mail sent to each counsel, the ALJ granted the Motion for Extension of Time to File Schedule

and ordered the Parties to file, not later than August 8, 2014, either a settlement or a filing that complied with Decision No. R14-0819-I.¹

10. On August 7, 2014, the Parties filed (in one document) a Stipulated Motion for Imposition of Restrictive Amendments [Motion] and Conditional Withdrawal of Intervention [Withdrawal of Intervention].

11. As noticed by the Commission, the Application sought authority to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of

passengers

between all points in the County of El Paso, State of Colorado.

RESTRICTIONS: This authority is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid; and
- (B) to providing Non-Emergent Medical Transportation (NEMT) and Developmental Disability (DD) Transportation for the El Paso County Department of Human Services, 1675 West Garden of the Gods Road, 3rd Floor, Colorado Springs, Colorado.

Notice at 4.

12. In the Motion, Amblicab moves to amend the authority sought by the Application. If the Motion is granted, Amblicab will seek authority to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of

passengers

between all points in the County of El Paso, State of Colorado.

RESTRICTIONS: This authority is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid;

¹ This Decision memorializes that ruling.

- (B) to providing Non-Emergent Medical Transportation (NEMT) and Developmental Disability (DD) Transportation for the El Paso County Department of Human Services, 1675 West Garden of the Gods Road, 3rd Floor, Colorado Springs, Colorado;
- (C) to providing door to door service to passengers;
- (D) to the use of only wheelchair accessible vehicles; and
- (E) against providing transportation services to hotels, motels, and airports.

Motion at ¶ 5.

13. CST states that, if the Commission approves the amendments contained in the Motion, CST's "interests will be satisfied and its intervention shall be deemed withdrawn." Withdrawal of Intervention at ¶ 8.

14. To be acceptable, an amendment must be restrictive in nature; must be clear and understandable; and must be administratively enforceable. Both the contract carrier permit and any restriction on that permit must be unambiguous and must be contained wholly within the authority granted. Both must be worded so that a person will know, from reading the contract carrier permit and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of a contract carrier permit must be found within the four corners of the authority, which is the touchstone by which one determines whether the contract carrier's operations are within the scope of its Commission-granted authority.

15. The amendments and the resulting contract carrier permit, if the Application is granted, meet the standards stated above. The ALJ will approve the amendments contained in the Motion at ¶ 5, as set out above.

16. The ALJ finds that the Motion states good cause and that no party will be prejudiced if that motion is granted. The ALJ will grant the Motion.

17. Approving the restrictive amendments to the Application (*i.e.*, to the scope of the contract carrier permit that Applicant seeks) has these effects. First, the contract carrier authority sought, as stated in the Application, will be amended to conform to the amendments contained in this Decision. Second, the Withdrawal of Intervention will be granted; and the CST intervention will be dismissed.

18. Dismissal of the intervention leaves the Application uncontested and unopposed.

19. Pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1403,² the Commission may consider an uncontested and unopposed application pursuant to the Commission's modified procedure and without a formal hearing. The ALJ finds that the Application, as amended, should be considered, and will be considered, under the Commission's modified procedure and without a formal hearing.

20. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this Proceeding along with a written recommended decision.

II. FINDINGS, DISCUSSION, AND CONCLUSION

21. Applicant is a Colorado corporation.

22. By the Application, as amended, Applicant seeks a permit to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the County of El Paso, State of Colorado.

RESTRICTIONS: This authority is restricted:

(A) to the transportation of passengers who are recipients of Medicaid; and

² This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

- (B) to providing Non-Emergent Medical Transportation (NEMT) and Developmental Disability (DD) Transportation for the El Paso County Department of Human Services, 1675 West Garden of the Gods Road, 3rd Floor, Colorado Springs, Colorado;
- (C) to providing door to door service to passengers;
- (D) to the use of only wheelchair accessible vehicles; and
- (E) against providing transportation services to hotels, motels, and airports.

23. The Application establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 CCR 723, and agrees to be bound by, and to comply with, those Rules as applicable to it. The Application and its supporting documentation establish that Applicant has sufficient equipment with which to render the proposed transportation service; has the experience to conduct operations under the authority requested; and is financially fit to conduct operations under the authority requested. In addition, the Application and its supporting documents establish that the service proposed is specialized and is tailored to meet the customer's distinct needs. Finally, review of the Application and its supporting documentation indicates a need for the proposed contract carrier service. Because the Applicant is fit, financially and otherwise, to perform the proposed service and because the other prerequisites have been met, the ALJ will grant the Application and will issue the contract carrier permit subject to conditions.

24. Having determined that the contract carrier permit should issue, the ALJ finds and concludes that the contract carrier permit should be subject to the conditions contained in the Ordering Paragraphs below.

25. One of the conditions stated in the Ordering Paragraphs is: before commencing service as a contract carrier, Amblicab must file with the Commission its written contract with the El Paso County Department of Human Services to provide NEMT and DD Transportation.

The basis for this condition is Rule 4 CCR 723-6-6209, which governs the contracts pursuant to which a contract carrier provides transportation service. That Rule reads:

- (a) Except as otherwise permitted by law, a contract carrier shall not enter into a contract for transportation with any person not named in the contract carrier's permit.
- (b) Except as otherwise permitted by law, a contract carrier shall not engage in any act of transportation for compensation except in compliance with the contract between the contract carrier and the person named in the contract carrier's permit.
- (c) *Contracts shall be written.*
- (d) *At a minimum, all contracts shall specify the following:*
 - (I) the names of the parties to the contract;
 - (II) the provisions regarding the scope and terms of transportation and accessorial services to be provided; and
 - (III) the date(s) and terms of the contract, including rates.
- (e) A contract carrier shall not operate in conflict with the contract carrier's permit.
- (f) A contract carrier shall not operate in conflict with the contract carrier's tariff.

(Emphasis supplied.) Amblicab may file this contract under seal if Amblicab believes that the contract constitutes or contains confidential information. *See* Rules 4 CCR 723-1-1100 and 723-1-1101.

26. Questions concerning completion of the conditions should be directed to Mr. Gabe Dusenbury of the Commission Staff (telephone no.: 303.894.2046).

27. In accordance with § 40-6-109, C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Stipulated Motion for Imposition of Restrictive Amendments, which motion was filed on August 7, 2014, is granted.

2. Consistent with the discussion above, the verified Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire, which was filed on May 29, 2014 and amended and supplemented on May 30 and June 10, 2014, is amended.

3. The Conditional Withdrawal of Intervention, which was filed on August 7, 2014, is granted.

4. Colorado Springs Transportation, LLC, is dismissed from this Proceeding.

5. Consistent with the discussion above and subject to the conditions stated below, the verified Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire filed on May 29, 2014, as amended and supplemented, is granted.

6. Subject to the conditions stated in the Ordering Paragraphs below, Disability Services, Inc., doing business as Amblicab, is granted a contract carrier permit to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of

passengers

between all points in the County of El Paso, State of Colorado.

RESTRICTIONS: This authority is restricted:

(A) to the transportation of passengers who are recipients of Medicaid;

- (B) to providing Non-Emergent Medical Transportation (NEMT) and Developmental Disability (DD) Transportation for the El Paso County Department of Human Services, 1675 West Garden of the Gods Road, 3rd Floor, Colorado Springs, Colorado;
- (C) to providing door to door service to passengers;
- (D) to the use of only wheelchair accessible vehicles; and
- (E) against providing transportation services to hotels, motels, and airports.

7. All operations under the contract carrier permit granted by Ordering Paragraph No. 6 shall be strictly contract operations. The Commission retains jurisdiction to make such amendments to this contract carrier permit as the Commission deems advisable.

8. The authority granted in Ordering Paragraph No. 6 is conditioned on Disability Services, Inc., doing business as Amblicab, meeting the conditions contained in this Decision. The authority granted in Ordering Paragraph No. 6 is not effective until Disability Services, Inc., doing business as Amblicab, meets the stated conditions.

9. Disability Services, Inc., doing business as Amblicab, shall not begin operation under the contract carrier permit granted by this Decision until it has satisfied all of the following conditions:

(a) Disability Services, Inc., doing business as Amblicab, shall file with the Commission a copy of the written contract with the El Paso County Department of Human Services to provide Non-Emergent Medical Transportation and Developmental Disability Transportation. The written contract must meet the requirements of Rule 4 *Code of Colorado Regulations* 723-6-6209(d). Disability Services, Inc., doing business as Amblicab, may file this contract under seal if Disability Services, Inc., doing business as Amblicab, believes that the contract constitutes or contains confidential information.

(b) Disability Services, Inc., doing business as Amblicab, shall file with the Commission an advice letter and proposed tariffs, as required by Rules 4 *Code of Colorado Regulations* 723-1-1210(b) and 723-1-1210(c) and Rule 4 *Code of Colorado Regulations* 723-6-6207. The tariffs shall have a proposed effective date that is not earlier than ten days after the advice letter and proposed tariffs are filed with the Commission. In calculating the proposed effective date, the date on which the Commission receives the advice letter and

proposed tariffs is not included in the ten-day notice period; and the entire ten-day notice period must expire prior to the proposed effective date. Disability Services, Inc., doing business as Amblicab, shall file the advice letter and proposed tariffs as a new Advice Letter proceeding.

(c) Disability Services, Inc., doing business as Amblicab, shall cause to be filed with the Commission *either* proof of insurance coverage (Form E or self-insurance) *or* proof of surety bond coverage, as required by and in accordance with Rule 4 *Code of Colorado Regulations* 723-6-6007.

(d) Disability Services, Inc., doing business as Amblicab, shall pay to the Commission the \$ 5.00 issuance fee required by § 40-10.1-111(1)(a), C.R.S.

(e) For each vehicle to be operated under the contract carrier permit granted by this Decision, Disability Services, Inc., doing business as Amblicab, shall pay to the Commission the annual motor vehicle fees as required by Rule 4 *Code of Colorado Regulations* 723-6-6009. In lieu of those fees and if applicable, Disability Services, Inc., doing business as Amblicab, shall pay to the Commission, for each vehicle to be operated under the contract carrier permit granted by this Decision, the fee for that vehicle pursuant to Rule 4 *Code of Colorado Regulations* 723-6-6401 (the Unified Carrier Registration Agreement).

(f) Disability Services, Inc., doing business as Amblicab, has received from the Commission a written notice that Disability Services, Inc., doing business as Amblicab, has complied with conditions (a) through (e) in this Ordering Paragraph and may begin providing transportation service pursuant to the contract carrier permit granted by this Decision.

10. If Disability Services, Inc., doing business as Amblicab, does not comply with the requirements of Ordering Paragraph No. 9 within 60 days of the effective date of this Decision, then Ordering Paragraphs No. 5 and No. 6 shall be void. On good cause shown by an appropriate and timely filing made in this Proceeding, the Commission may grant Disability Services, Inc., doing business as Amblicab, additional time within which to comply with the requirements of Ordering Paragraph No. 9.

11. The right of Disability Services, Inc., doing business as Amblicab, to operate pursuant to the contract carrier permit granted by this Decision shall depend on Disability Services, Inc., doing business as Amblicab's compliance with all applicable present and future statutes, Commission regulations, and Commission decisions.

12. The Motion for Extension of Time to File Schedule, which motion was filed on August 1, 2014, is granted *nunc pro tunc*.

13. Not later than August 8, 2014, the Parties shall file either a settlement agreement or shall make a filing that complies with Decision No. R14-0819-I.

14. 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.

15. 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 recommended 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 a basic finding 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.

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

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge