

Decision No. R14-1111

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0633BP

IN THE MATTER OF THE APPLICATION OF SYLVER HOME CARE LLC DOING
BUSINESS AS HOME HELPERS/DIRECT LINK #58650 FOR A PERMIT TO OPERATE AS
A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
GRANTING WITHDRAWAL OF INTERVENTION;
GRANTING PERMANENT AUTHORITY TO OPERATE AS
A CONTRACT CARRIER WITH RESTRICTIVE
AMENDMENTS UNDER MODIFIED PROCEDURES**

Mailed Date: September 10, 2014

I. STATEMENT

1. On June 9, 2014, Sylver Home Care, LLC, doing business as Home Helpers/Direct Line #58650 (Applicant) filed an Application for a permit to operate as a contract carrier by motor vehicle for hire (Application).

2. On June 16, 2014, the Commission issued notice of the Application as follows:

For authority to operate as a contract carrier by motor vehicle for hire for the transportation of

passengers

between all points in the Counties of Adams, Douglas, Larimer, and Weld, State of Colorado.

RESTRICTIONS: This application is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid;
- (B) to providing Non-Medical Transportation (NMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado;

(C) against providing transportation services to or from airports and hotels;
and,

d) to no more than two (2) vehicles in service at a time.

3. The Commission issued notice of the Application to all interested parties on June 16, 2014.

4. On July 16, 2014, Colorado Cab Company, LLC, doing business as, Denver Yellow Cab, Boulder Yellow Cab; Shamrock Taxi of Fort Collins, Inc.; and Colorado Springs Transportation, LLC (collectively, Colorado Cab), filed an Entry of Appearance and Notice of Intervention by Right.

5. On July 23, 2014, the Commission, at its regular weekly meeting, deemed the application complete and referred the matter to an Administrative Law Judge (ALJ) for disposition. The matter was subsequently assigned to the undersigned ALJ.

6. On July 31, 2014, Applicant filed a supplement to the Original Application wherein the areas to be served were amended to include only the Counties of Arapahoe, Denver, Adams, and Jefferson.

7. By Interim Decision No. R14-0947-I, issued on August 5, 2014, the intervention of Colorado Cab was granted. In addition, a pre-hearing conference was scheduled for August 21, 2014.

8. On August 11, 2014, the Commission re-issued notice of the Application to include the newly proposed geographic areas to be served by Applicant.

9. On August 19, 2014, Colorado Cab filed a Motion for Conditional Withdrawal of Intervention (Motion). According to the Motion, based on the amended Application which

proposed new geographic areas of service, Colorado Cab's interests would be satisfied if any authority granted to Applicant in this proceeding includes only those amended geographic areas.

10. On August 20, 2014, Decision No. R14-1011-I was issued which granted Colorado Cab's Motion. In addition, that Decision noted that pursuant to the re-noticed Application as amended, any other party wishing to intervene in the proceeding had until September 10, 2014 to file a pleading to seek intervenor status. The pre-hearing conference scheduled for August 21, 2014 was vacated.

11. No other party intervened in this proceeding pursuant to the notice of the amended Application.

12. Because this Decision will consider the Application as amended, the intervention of Colorado Cab will be deemed withdrawn.

13. 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 AND CONCLUSIONS

14. Since the Application as amended is now unopposed, the matter will be considered pursuant to the Commission's modified procedure, § 40-6-109(5), C.R.S., and the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1-1403.

15. Applicant restricted the Application with several proposed restrictions. A proposed restriction to an application for authority to operate as a contract carrier or common carrier by motor vehicle for hire must be restrictive in nature, clear and understandable, and administratively enforceable. The proposed restrictions and authority must be unambiguous and must be contained entirely within the authority granted.

16. The proposed contract carrier authority as amended now reads as follows:

Transportation of

passengers

between all points in the Counties of Arapahoe, Denver, Adams, and Jefferson, State of Colorado.

RESTRICTIONS: This authority is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid;
- (B) to providing Non-Medical Transportation services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado;
- (C) against providing transportation services to or from airports and hotels; and,
- (D) to no more than two vehicles in service at any onetime.

17. The restrictive amendments proposed by Applicant are clear, unambiguous, and capable of enforcement. Therefore, it is found that the proposed restrictions contained in the amended Application will not hamper the ability of the Applicant to provide the proposed contract carrier service. The proposed restrictions to the amended contract carrier Application are restrictive in nature and capable of enforcement.

18. The amended Application establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723 Part 6, and agrees to comply with those Rules to the extent applicable to Applicant.

19. Additionally, the information provided by Applicant provides that Applicant possesses sufficient equipment to provide the proposed service and is financially viable to conduct operations under the authority requested. The Application and the supporting information attached demonstrate that a need exists for the proposed service.

20. It is found that Applicant is fit to provide the proposed transportation service and the Application with the proposed restrictions is reasonable, in the public interest, and should be granted.

21. One of the conditions stated in the Ordering Paragraphs is: before commencing service as a contract carrier, Sylver Home Care, LLC, doing business as Home Helpers/Directline #58650, must file with the Commission its written contract with the Colorado Department of Health Care Policy and Financing to provide non-emergency medical transportation. The basis for this 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.

Sylver Home Care, LLC, doing business as Home Helpers/Directline #58650, may file this contract under seal if it believes that the contract constitutes or contains confidential information.

See Rules 4 CCR 723-1-1100 and 723-1-1101.

22. **Questions concerning completion of this requirement should be directed to Mr. Gabe Dusenbury of the Commission Staff (telephone no.: 303-894-2046).**

23. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Application of Sylver Home Care, LLC, doing business as Home Helpers/Directline #58650 is granted consistent with the discussion above.

2. The intervention of Colorado Cab Company, LLC, doing business as, Denver Yellow Cab, Boulder Yellow Cab; Shamrock Taxi of Fort Collins, Inc.; and Colorado Springs Transportation, LLC is deemed withdrawn.

3. Sylver Home Care, LLC, doing business as Home Helpers/Directline #58650 is granted a permit to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of

passengers

between all points in the Counties of Arapahoe, Denver, Adams, and Jefferson, State of Colorado.

RESTRICTIONS: This application is restricted as follows:

- (A) to the transportation of passengers who are recipients of Medicaid;
- (B) to providing Non-Medical Transportation services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado;
- (C) against providing transportation services to or from airports, and hotels; and,
- (D) to no more than two vehicles in service at any onetime.

4. The authority granted in Ordering Paragraph No. 3 is conditioned upon Sylver Home Care, LLC, doing business as Home Helpers/Directline #58650 meeting the requirements contained in this Decision and the authority is not effective until these requirements have been met.

5. Sylver Home Care, LLC, doing business as Home Helpers/Directline #58650 shall not commence operations until it has complied with the requirements of Colorado law and Commission regulations, including without limitation:

- (a) Sylver Home Care, LLC, doing business as Home Helpers/Directline #58650 shall file with the Commission a copy of the written contract with the Colorado Department of Health Care Policy and Financing to provide non-emergency medical transportation. The written contract must meet the requirements of Rule 4 *Code of Colorado Regulations* 723-6-6209(d). Moss LLC may file this contract under seal if Sylver Home Care, LLC, doing business as Home Helpers/Directline #58650 believes that the contract constitutes or contains confidential information.
- (b) causing proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;
- (c) paying to the Commission, the motor vehicle fee (\$5) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
- (d) having an effective tariff on file with the Commission. Sylver Home Care, LLC, doing business as Home Helpers/Directline #58650 shall file an advice letter and tariff on not less than ten days' notice. The advice letter and tariff shall be filed as a new Advice Letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. (Additional tariff information can be found on the Commission's website at dora.colorado.gov/puc and by following the transportation common and contract carrier links to tariffs); and
- (e) paying the applicable issuance fee (\$5).

6. If Sylver Home Care, LLC, doing business as Home Helpers/Directline #58650 does not comply with the requirements of Ordering Paragraph No. 5 above, within 60 days of the

effective date of this Decision, then Ordering Paragraph No. 3 above shall be void. On good cause shown, the Commission may grant Sylver Home Care, LLC, doing business as Home Helpers/Directline #58650 additional time for compliance with this Decision.

7. The right of Applicant to operate shall depend upon Applicant's compliance with all present and future laws and regulations of the Commission.

8. The Commission will notify Sylver Home Care, LLC, doing business as Home Helpers/Directline #58650 in writing when the Commission's records demonstrate compliance with Ordering Paragraph 5.

9. 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.

10. 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.

11. 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.

(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

PAUL C. GOMEZ

Administrative Law Judge