



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION



2800 BERLIN TURNPIKE, P.O. BOX 317546
NEWINGTON, CONNECTICUT 06131-7546

Phone:

(860) 594-2875

DOCKET NO. 0606-N-42-L-A

RE: APPLICATION OF MAC TRANSPORTATION TO OPERATE THREE (3) ADDITIONAL MOTOR VEHICLES HAVING A SEATING CAPACITY TEN (10) ADULTS OR LESS, IN GENERAL LIVERY SERVICE, BETWEEN ALL POINTS IN CONNECTICUT FROM A HEADQUARTERS IN NEW HAVEN, CONNECTICUT.

FINAL DECISION

June 28, 2007

I. INTRODUCTION

A. Application

By application filed on January 30, 2007 with the Department of Transportation (hereinafter "department"), pursuant to Section 13b-103 of the Connecticut General Statutes, as amended, MAC Transportation, LLC (hereinafter "applicant") located at 294 Summit Street, New Haven, Connecticut seeks authorization to operate three (3) additional motor vehicles in general livery service, having a seating capacity of ten (10) adults or less, between all points in Connecticut from a headquarters in New Haven, Connecticut.

B. Hearing

Pursuant to Connecticut General Statutes Section 13b-103(a), as amended, a public hearing on this application was held on April 16, 2007. Late filed evidence was submitted on May 22, 2007, the submission of which closed the record.

Notice of the application and of the hearing to be held thereon was given to the applicant and to such other parties as required pursuant to General Statutes Section 13b-103(a)(1), as amended. Legal notice to the public was given by publication in the New Haven Register, a newspaper having a circulation in the area of concern.

A hearing officer designated by the Commissioner, pursuant to Connecticut General Statutes Section 13b-17, conducted the hearing on this matter.

C. Appearances

The applicant appeared through John L. McCray, its member, and was represented by Charnina R. Smith, Esq. of the Smith Law Firm, whose address is 15 June Street, Woodbridge, Connecticut. The applicant's address is 294 Summit Street, New Haven, Connecticut.

Connecticut Handivan, Inc. filed for, and was afforded, intervenor status in this matter. The intervenor appeared through its vice-president, Saleem Khan, and was represented by Ann Moore, Esq. with the Law Office of Ann Moore LLC whose address is 18 Parkland Place, Milford, Connecticut. The intervenor holds permit number 2601 and is authorized to operate general livery service and livery under contract from a headquarters in North Haven, a town contiguous to the applicant's headquarters town.

Utilities examiner Sheldon Lubin, with the Regulatory and Compliance

Unit, was in attendance.

II. FINDINGS OF FACT

1. The applicant is authorized to operate two (2) motor vehicles in intrastate general livery service and interstate livery service from a headquarters in New Haven, pursuant to Livery Permit No. 3080. This authority was issued on January 2, 2007.

2. The applicant seeks authorization to operate three additional vehicles in general livery service from a headquarters in New Haven.

3. The applicant provides ambulatory livery transportation for Logisticare, Inc. within Fairfield and New Haven Counties.

4. Logisticare, Inc. will be shifting the applicant's calls to cover the Litchfield County area rather than New Haven and Fairfield Counties to fill a void in Litchfield County which was left by a transportation provider that will no longer provide service to Logisticare, Inc. network.

5. The applicant's trip sheets are incomplete and show only the client's name and signature.

6. The applicant's trip sheets show that the applicant does not provide general livery service; based on the trip sheets the applicant provides only contract work for transportation broker Logisticare, Inc.

7. Winsley Moore lives in New Haven and she has used the applicant's service two times in 2007.

8. Natherl Moore has uses the applicant's livery service approximately two times a month since the applicant began its intrastate livery service.

9. The applicant has four motor vehicle loans, each with a monthly payment of approximately \$625.

10. The applicant's estimated cost of monthly repairs and maintenance is \$75 per vehicle.

11. The applicant's total estimated fuel expense per month is \$1,200.

12. The applicant's insurance payment is approximately \$710 per month, per vehicle.

13. The applicant's cash on hand, as of March 31, 2007, was \$4,483.

III. DISCUSSION

The department has jurisdiction over each person, association, limited liability company or corporation owning or operating a motor vehicle in livery service, pursuant to General Statutes Section 13b-102, as amended.

In determining whether a livery permit should be granted, the department shall take into consideration the present or future public convenience and necessity. The applicant must prove that the public's convenience and necessity will be improved by the proposed service. Additionally, the applicant must show the suitability of the applicant or the suitability of the management if the applicant is a limited liability company or corporation, the financial responsibility of the applicant, the ability of the applicant efficiently and properly to perform the service for which authority is requested and the fitness, willingness and ability of the applicant to conform to the provisions of the statutes and the requirements and regulations of the department thereunder, in accordance with General Statutes Section 13b-103.

The financial documentation submitted into evidence by the applicant shows that the applicant, as of March 2007, had a cash balance in the amount of \$4,483. The applicant has four outstanding loans, totaling approximately \$625 per loan payment, per month. In addition, the applicant's vehicle insurance is currently \$7,742 per vehicle and the insurance is financed at \$710 per month, per vehicle for nine months. The applicant's monthly vehicle maintenance is \$75 per vehicle and the fuel costs are approximately \$1,200 for all vehicles in total. The applicant's financial obligations are quite high in relation to the monies brought in. However, since the applicant does not intend to purchase any additional vehicles and all of its vehicles are in operation whether in intrastate or interstate livery service, the outlay of capital will be minimal. Therefore, the applicant is found to have the financial wherewithal to operate the three additional vehicles requested. The addition of these vehicles will allow the applicant to provide more rides, which will generate more income and sustain the company.

In support of suitability, the applicant has on file the requisite criminal conviction history form showing no criminal record for the only member/owner and manager of the company, Johnny McCray. The applicant has been operating in general livery service for the past six months, and prior to that in interstate livery, also with no impediments. The only transgression noted by this hearing officer relates to the trips sheets entered into evidence as a late filed exhibit at the request of the hearing officer. The trip sheets submitted into evidence are incomplete and do not accurately reflect the sufficient detail required for the department to assess the results of the applicant's operation.

With regard to the trips sheets, the applicant is required to maintain trip sheets in accordance with Regulations of Connecticut State Agencies Section 16-325-5, which provides:

Permit holders shall maintain their accounts in sufficient detail to readily furnish to the authority, upon request, reports of their financial condition and *the results of their operations* (emphasis added). All books, records, vouchers, memoranda and other papers relating to the business of the permit holder shall be maintained and available for examination by the authority for a minimum for two years.

Accordingly, Mac Transportation, LLC is hereby put on notice that its trip sheets should comport to the requirements of the regulations and the department. The applicant will be considered suitable to operate the proposed service, but will be ordered to review trip sheet requirements with staff of the Regulatory and Compliance Unit to enable the department to assess the business operations.

In support of public convenience and necessity, the applicant's late filed evidence included trip sheets for three weeks, in addition to financial updates and lists of potential customers – or people turned down for service. The trips sheets requested of the applicant for three weeks of the applicant's choice, within the last four months prior to hearing, show that the general livery vehicles are used to provide rides for Logisticare, Inc. and not general livery service. The applicant provides an average of 30 trips per day, which averages approximately 15 trips per car, per day. A review of said trip sheets show that the current two cars the applicant has are ample to provide service to Logisticare, Inc.

In support of the additional vehicles, Claude Bisson, Logisticare, Inc.'s transportation manager, testified that Logisticare, Inc. supports the granting of three vehicles to provide the transportation needed by Logisticare. Bisson testified that Logisticare, Inc. will now be sending the applicant further out to provide rides to the Litchfield County area. Sending the applicant to provide trips to and from Litchfield County, Bisson testified, would fill a void left by a company that no longer works for Logisticare, Inc.

Bisson testified that Logisticare, Inc. would be assigning the applicant 50 trips per day. In light of this testimony, authority for two additional vehicles would amply cover the 20 extra trips that Logisticare, Inc. would dispatch to the applicant. A grant of two additional vehicles would enable the applicant to provide coverage for the extra 20 trips. Two additional vehicles would allow for adjustments for additional time that might be required to drive a farther distance, from the applicant's headquarters in New Haven to the Litchfield County area and return. If

approximately 50 trips per day are to be assigned to the applicant by Logisticare, Inc., then a grant of two vehicles would allow the applicant to maintain close to the same number of trips per vehicle that it is providing presently; the average trip per vehicle, per day, would be approximately 12. This would leave room for the applicant to provide for additional trips and it would allow the general livery vehicles to provide general livery service, thereby accommodating the present and future public convenience and necessity.

In further support of public convenience and necessity for general livery service, the applicant provided a list of potential customers that are turned down for service each day. This evidence is unreliable and untrustworthy. The names on the first page are duplicated throughout the list, in the exact same order – showing that the first page of the list was copied and attached to make a longer list. Moreover, there is no indication as to what kind of livery service these people may have requested, if requested at all. Accordingly, the lists of potential witnesses are given little weight in the public convenience and necessity determination.

Lastly, the current application is for three additional vehicles in general livery service. No evidence was presented to support the grant of authorization for additional general livery service. Two witnesses testified that they used the applicant since the company was approved for intrastate service in January 2007; however their testimony showed that their use was minimal and sporadic.

Ivan Hincapie testified that he has been a driver for the applicant for the past two months. He testified that he drives to LaGuardia and Kennedy airports, which are in New York and that he did not do any driving for medical livery. Contrary to the witness's testimony, the trip sheets show that Hincapie does drive medical livery clients. This conflicting testimony casts doubt on the witness' veracity.

In addition to the above, the applicant submitted letters of support for the proposed service however, the signatories of the letters were not present at the hearing to testify and thus the letters are given little weight to prove public convenience and necessity. See Norwalk Yellow Cab, Inc. v. Department of Transportation et al, Hartford/New Britain J.D. at Hartford, (Docket No. CV-93-0704676S), July 6, 1994.

At the conclusion of the applicant's case, William Scalzi, the owner of a livery and taxicab company that operate in the New Haven area requested leave to make a statement. Scalzi testified that his taxicab company provides service to Logisticare, Inc. and that Scalzi's companies have the capacity to provide additional service to Logisticare, Inc. The ability of one company to take on additional work is not the only criterion on which to grant or deny service under contract. For contract livery service, the public convenience and necessity element is primarily determined

by the existence of a contract between the provider and the transportation broker, unless there is evidence that there is no basis on which the transportation broker is supporting a livery company. In this case, the evidence was that the applicant will be providing contract service to the Litchfield area. Scalzi testified that this is not a big source of work for his companies.

Although the instant application is for general livery service, the evidence does not support such a grant; the weight of the evidence supports a conclusion applicant's work is livery service under contract. The evidence shows that the public convenience and necessity will be improved by a grant of two vehicles, if the applicant produces the contract with Logisticare, Inc. Two additional vehicles will allow the applicant to provide an average of approximately 12 trips per day for Logisticare, Inc. which will meet the demand as supported by the evidence.

In conclusion, the applicant did not enter into evidence a contract between Logisticare, Inc. and MAC Transportation. For the grant of authority for the transportation of passengers for hire by virtue of a contract with, or a lower tier contract for, any federal, state or municipal agency, the applicant will be required to submit to the Administrative Law Unit of the department, an executed contract by and between MAC Transportation, LLC and Logisticare, Inc.

IV. CONCLUSIONS OF LAW

MAC Transportation, LLC possesses the financial wherewithal and suitability to operate the proposed service and the public convenience and necessity will be improved by said service, in accordance with Connecticut General Statutes Section 13b-103(a). The applicant's submission of the contract will be required prior to registration of vehicles and within 15 days from the date of this final decision.

V. ORDER

Based upon the above and pursuant to Conn. Gen. Stat. Section 13b-103, as amended, the application of MAC Transportation, LLC is hereby approved in part and Livery Permit No. 3080, standing in the name of MAC Transportation, LLC, is hereby amended and reissued as follows:

LIVERY PERMIT NO. 3080 FOR THE OPERATION OF LIVERY SERVICE

MAC Transportation, LLC, is hereby permitted and authorized to operate two (2) motor vehicles, having a seating capacity of less than ten (10) adults, in GENERAL LIVERY SERVICE between all points in Connecticut from a headquarters in New Haven.

MAC Transportation, LLC is further permitted and authorized to operate motor vehicles as a common carrier of passengers, in charter and special operations, in interstate commerce under such authorization as issued or amended by the Federal Motor Carrier Safety Administration in the issuance of Certificate No. MC-557402-C.

This permit may not be sold or transferred until it has been operational, i.e., a vehicle registered with the livery plates thereunder, for not less than twenty-four (24) consecutive months.

This permit shall remain in effect until it is amended, suspended or revoked by the Department. Failure of the Permit holder to maintain proper insurance and/or comply with all pertinent motor vehicle laws and other State statutes and/or the rules, regulations and orders of the Department shall be considered sufficient cause to amend, suspend or revoke this Permit.

This permit is transferable only with the approval of the Department and is issued subject to compliance by the holder hereof with all motor vehicle laws of the State of Connecticut, and with such rules, regulations and orders as this Department may from time to time prescribe.

**DURATIONAL TRANSPORTATION OF
PASSENGERS FOR HIRE BY VIRTUE OF A CONTRACT WITH,
OR A LOWER TIER CONTRACT FOR, ANY FEDERAL,
STATE OR MUNICIPAL AGENCY**

**DURATIONAL LIVERY SERVICE UNDER CONTRACT
WITH LOGISTICARE, INC. GRANTED
IN DOCKET NO. 0606-N-42-L-A JUNE 26, 2007.**

MAC Transportation, LLC is further hereby permitted and authorized to operate TWO (2) motor vehicles, having a seating capacity of less than ten (10) adults, for the provision of livery service under contract with any Federal, State or Municipal agency, or a lower tier contact thereof, to wit, Logisticare, Inc., from a headquarters in New Haven, Connecticut.

REQUIREMENTS PRIOR TO REGISTRATION AND CONDITIONS

1. Prior to registering a vehicle authorized herein, MAC Transportation, LLC shall file, with the Administrative Law Unit a current, executed contract by and between MAC Transportation, LLC and Logisticare, Inc. within 15 days from the date of this Final Decision. Failure to comply with this order will result in the voiding of authority granted herein.

2. Prior to registering a vehicle authorized herein, MAC Transportation, LLC is ordered to meet with Regulatory and Compliance personnel to ensure that the applicant has an understanding of the regulatory requirements for trip sheets. Confirmation of said meeting shall be documented in the applicant's permanent authority file.

3. The applicant is ordered to register its vehicles within 30 days from the date of this final decision.

The authority granted in this Docket, No. 0606-N-42-L-A shall be durational in nature and shall exist only for the period of time that the permit holder has a current and continuing contract in effect for the provision of service with Logisticare, Inc.

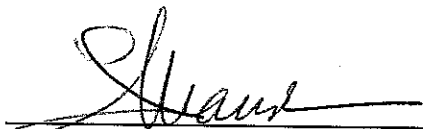
The permit holder shall notify the Department of any termination of its contract with Logisticare, Inc. or the cessation of the active provision of service thereunder. The permit holder shall file with the Department on an annual basis, upon registration or re-registration of the motor vehicle authorized in this decision, a current, executed copy of the extension of said contract. Failure to file an extension of the contract or a new executed contract with Logisticare, Inc. shall void the authority for the vehicle authorized pursuant to this contract.

This permit is not transferable and shall remain in effect until revoked by the Department or until the contract under which this authority is granted has expired. Failure of the permit holder to maintain proper insurance and/or comply with all pertinent motor vehicle laws and other State statutes and/or rules, regulations and orders of the Department shall be considered sufficient cause to amend, suspend or revoke said permit.

A memorandum of this permit, bearing the seal of the Department, shall be kept conspicuously posted in the motor vehicles operated under this permit.

Dated at Newington, Connecticut, this 28th day of June 2007.

CONNECTICUT DEPARTMENT OF TRANSPORTATION



Laila A. Mandour
Staff Attorney III
Administrative Law Unit
Bureau of Finance and Administration