STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

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CORRECTED COPY

DOCKET NUMBER 0707-N-106-L

RE: APPLICATION OF B & M HANDICAP TRANSPORTATION SERVICE, LLC TO OPERATE ONE (1) MOTOR VEHICLE, HAVING A PASSENGER SEATING CAPACITY OF TEN (10) ADULTS OR LESS, IN LIVERY SERVICE FOR HANDICAPPED AND ELDERLY PERSONS BETWEEN ALL POINTS IN CONNECTICUT FROM A HEADQUARTERS IN WINDSOR.

CORRECTED FINAL DECISION

May 5, 2009

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I. INTRODUCTION

A. General

By application filed on July 16, 2007 with the Department of Transportation (hereinafter "Department"), pursuant to Section 13b-105 of the Connecticut General Statutes, as amended, B & M Handicap Transportation Service, LLC (hereinafter "applicant"), with a mailing address of 37 Olga Avenue, Windsor, Connecticut, 06095 seeks authorization to operate one (1) motor vehicle, having a seating capacity of ten (10) adults or less, in livery service for handicapped and elderly persons between all points in Connecticut from a headquarters in the Town of Windsor.

B. Hearing Held

Pursuant to Connecticut General Statutes Section 13b-103(a), as amended, a public hearing on this application was held on August 26, 2008.

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 the Connecticut General Statutes Section 13b-103. Legal notice to the public was given by publication in the Hartford Courant, 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

Betty E. Davis appeared pro se on behalf of the applicant. The applicant's mailing address is 37 Olga Avenue, Windsor, Connecticut 06095.

Sheldon Lubin, a member of Department staff, was present at the hearing.

II. FINDINGS OF FACT

1. The applicant seeks to transport handicapped and elderly people.

2. The applicant will operate its livery service with a 2000 Dodge Ram handicapped accessible van. The applicant owns the vehicle outright and it has a market value of $7,400.

3. The applicant will pay an annual cost of $3,193 to insure the vehicle.

4. As of the date of the hearing, the applicant's bank statement shows a balance of $87,178.

5. The applicant owns a house that has a market value of $172,000 with a mortgage balance of $49,000. The applicant's equity in the house is $123,000.

6. Ms. Davis is a Certified Nursing Assistant. She also has been a driver for a hospital she worked for and has experience transporting patients.

7. Mr. John Davis, a transportation broker for Perfect Rides, LLC, testified in support of the application. Mr. Davis plans to utilize the applicant to provide private pay livery trips to his customers. Mr. Davis arranges transportation for his customers from a network of transportation providers who work for his company. His company does not own any vehicles or provide transportation services directly. When he gets paid from the customer, he remits a portion of the payment and retains a referral fee which is typically 15% of the bill paid. Mr. Davis did not check with the Department when he set up his business.

8. The Department received a letter from the Town of Windsor, on August 6, 2008, which stated that the applicant cannot run her business from her residence at 37 Olga Avenue in Windsor because taxicab and livery businesses must be conducted from a commercial zone and she lives in a residential zone.

9. The applicant plans to garage her vehicle in Hartford to comply with the zoning regulations.

10. There was no opposition to the application.

III. DEPARTMENT ANALYSIS

The Department has jurisdiction over each person, association, limited liability company or corporation owning or operating a motor vehicle in livery service for handicapped and elderly persons, pursuant to Connecticut General Statutes Section 13b-105, as amended. The Department of Transportation may issue livery permits to applicants for the express purpose of providing reasonable livery service to handicapped persons and elderly persons on regular or irregular routes where the Department finds no existing service or that the existing service is not adequate to properly serve the special needs of elderly persons and handicapped persons. In determining the special needs of the handicapped and elderly, the Department may take into consideration the convenience and the physical and mental frailties of, and the care, safety and protection necessary for the best interest of, the handicapped and elderly and the general public.

The applicant provided financial information that shows that she has a balance of $87,178 in a savings account. The applicant owns a 2000 Dodge Ram van which has a market value of $7,400. The applicant owns a house with a market value of $172,000 which has a mortgage of $49,000, leaving equity of $123,000. The annual cost of insurance will be $3,193, while repairs and maintenance on the vehicle will cost about $1,300 annually. The annual cost of fuel for the vehicle is $4,600.

The applicant provided the requisite criminal conviction history form for Ms. Davis which shows no criminal record. Ms. Davis has worked as a Certified Nurses Assistant and has also driven a transportation vehicle for a hospital in the past.

As part of the requirements that must be met for a livery permit to be granted, the applicant must show that there is no existing livery service or that the existing service is not adequate. On this issue the applicant presented the testimony of Mr. John Davis, the owner of a transportation broker service, Perfect Rides, LLC. Mr. Davis acts as a transportation broker by taking reservations for a variety of transportation including livery trips which he then refers out to livery providers in his network. He bills the customer directly and then sends a portion of their payment to the livery company he has hired. He hopes to refer a couple of trips per week to the applicant because his clients have a need for livery service.

With regard to Mr. Davis's business, a review of the current operation reflects that the way it is set up violates the Department's rules and regulations in several regards. First, the company is in violation of Section 13b-103(e) of the Connecticut General Statutes because it is holding itself out as a livery company by billing customers directly. The livery company that provides the transportation should bill the customers directly and then send Mr. Davis a referral fee. Also, the billing cannot be based on the number of patrons in the vehicle, but rather must be based on either a time or mileage charge.

Another problem is that the billing needs to be based on the official tariff that each livery company has on file with the Department of Transportation which is based on an hourly or mileage charge pursuant to Section 16-325-7 of the Regulations of Connecticut State Agencies. No other rate or discount may be charged. It is not clear whether the livery companies working for Perfect Rides are charging the official Department tariff. Mr. Davis should consult the Regulatory & Compliance section of the Department to correct these problems. Any livery company that is working for Mr. Davis under the current system is operating illegally.

The applicant plans to operate her business with a 2000 Dodge Ram wheelchair accessible van which is equipped to transport disabled persons. This vehicle provides both convenience and safety in transporting the elderly and handicapped.

Based on the evidence presented, the applicant has shown that it should be granted a livery authority to service the elderly and handicapped.

IV. CONCLUSION AND ORDER

Based upon the above and pursuant to Connecticut General Statutes Section 13b-105, as amended, the application of B & M Handicapped Transportation Service, LLC. is hereby granted.

LIVERY PERMIT NO. 3228
FOR THE OPERATION OF LIVERY SERVICE

B & M Handicap Transportation Service, LLC is hereby permitted and authorized to operate one (1) motor vehicle, having a passenger seating capacity of ten adults or less, in livery service for the elderly and handicapped, from a headquarters in Windsor.

The authority granted in this decision may not be sold or transferred until it has been operational, i.e. with vehicles registered with livery plates for not less than twenty-four (24) consecutive months. If during the twenty-four (24) month period the applicant enters into a contract for the full or partial sale and transfer of any of the vehicles herein authorized, said authority granted in this final decision will be revoked.

This permit shall remain in effect until 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 revoke said 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 the Department may, from time to time prescribe.

Dated at Newington, Connecticut on this 5th day of May 2009.

CONNECTICUT DEPARTMENT OF TRANSPORTATION

Judith Almeida, Esq.

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