

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

dIn the Matter of the)	Application No. B-2096
Application of Happy Moments)	
Home Healthcare, LLC, Omaha,)	
seeking authority as a common)	
carrier in Nebraska intrastate)	
commerce in the transportation)	
of passengers in Open Class)	
service by sedan, van, and)	
SUV, in and between points in)	ORDER GRANTING APPLICATION
Douglas, Sarpy, Cass,)	
Washington, Polk, Dodge,)	
Cheyenne, Gage, York, Lincoln,)	
Grant, Burt, Boyd, Colfax,)	
Holt, Butler, Franklin,)	
Howard, Dawes, and Scotts)	
Bluff counties over irregular)	
routes. HHS Designation: Yes.)	Entered: December 10, 2024

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

On February 26, 2024, Happy Moments Healthcare ("Applicant"), Omaha, filed an application seeking authority as a common carrier in Nebraska intrastate commerce in the transportation of passengers in Open Class service by sedan, van, and SUV, in and between points in Douglas, Sarpy, Cass, Washington, Polk, Dodge, Cheyenne, Gage, York, Lincoln, Grant, Burt, Boyd, Colfax, Holt, Butler, Franklin, Howard, Dawes, and Scotts Bluff counties over irregular routes. HHS Designation: Yes.

Notice of the application was published in The Daily Record, Omaha, on March 22, 2024. No protests were filed. Due to the nature of the Application, the Commission decided to hold a hearing on its own motion to determine the disposition of the Application. A hearing on the Application was held on October 22, 2024, regarding Applicant's fitness to provide the proposed services.

H E A R I N G

A hearing in this matter was held on October 22, 2024. Alex Timperley appeared on behalf of Commission Staff. Exhibits 1 through 12 were entered into the record.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. B-2096

Page 2

LeKenvish Clouse testified on behalf of Applicant. Ms. Clouse stated that she currently owns and operates a home healthcare agency.¹

During questioning from Commission staff, Ms. Clouse stated that her role in the company would be administrator and would more than likely also include work as a driver.² Ms. Clouse stated that the client care coordinator at her current business would be assisting in the business with scheduling and directing transportation.³ Ms. Clouse stated that she has been operating a business providing in-home care services for the last year and a half and that business has fifteen employees.⁴ She stated that she planned to use six or seven drivers at the start of her transportation business.⁵ All drivers would go through training, driver testing, and will undergo required background checks.⁶

Exhibit 8 was entered into the record, which is a copy of an email exchange between Transportation Department staff and Ms. Clouse where Ms. Clouse clarified that she intended to provide Open Class service.⁷ Exhibit 9 was then entered into the record, which is a copy of an email exchange between Transportation Department staff and Ms. Clouse where Ms. Clouse clarified that Applicant would not be providing bus service and listed the counties in which applicant intended to operate.⁸

Ms. Clouse testified that her hours of operation would be Monday through Friday 6:00 a.m. to 5:00 p.m. with weekend services being scheduled ahead of time as needed.⁹ Ms. Clouse stated that she has office space for the business.¹⁰ She further testified that as a common carrier she would be willing to provide transportation

¹ Hearing Transcript at 9:22-10:3 (October 22, 2024).

² *Id.* at 11:11-11:24.

³ *Id.* at 11:25-12:7.

⁴ *Id.* at 12:22-13:17.

⁵ *Id.* at 13:19-13:22.

⁶ *Id.* at 13:23-14:12.

⁷ *Id.* at 14:14-15:22.

⁸ *Id.* at 15:23-17:7.

⁹ *Id.* at 17:9-17:16.

¹⁰ *Id.* at 17:17-17:19.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. B-2096

Page 3

to any member of the general public.¹¹ She stated that if demand for services increased she would look at adding vehicles, equipment, or employees.¹² Ms. Clouse intends to utilize a 2010 Dodge Caravan, a 2013 Dodge Caravan, and a 2010 Kia Rio in the proposed operation, all of which are owned by Applicant.¹³ Ms. Clouse stated that she received an insurance quote of \$670 a month per vehicle.¹⁴

Ms. Clouse testified that she has two years of psychology education from Iowa Western, one year of business administration education from Iowa Western, and three years of managerial experience.¹⁵ She testified that Applicant has a little more than the \$45,000 of assets listed in the application, but those assets are also for the currently operating business and that amount did not include the owned vehicles.¹⁶

Exhibit 10 was entered as an exhibit, which is the criminal history report completed by the Nebraska State Patrol for Ms. Clouse.¹⁷ Ms. Clouse said that it was accurate that she has prior offenses related to insurance, financial/theft, and driving.¹⁸ She also stated that it was accurate that her most recent offense listed was in 2012.¹⁹ Ms. Clouse acknowledged that in 2007 she was convicted of felony insurance fraud which led to her spending time at the Nebraska Department of Correctional Services.²⁰ Ms. Clouse stated that since her incarceration she has taken steps which show rehabilitation, including taking classes while incarcerated, taking a better decision making class, and taking counseling services through Reconnect, Restore and Rebuild.²¹ Ms. Clouse further stated that she had to go before DHHS for approval as a

¹¹ *Id.* at 17:20-17:23; 38:15-44:1; 45:18-25.

¹² *Id.* at 17:24-18:6.

¹³ *Id.* at 18:7-19:10.

¹⁴ *Id.* at 18:20-19:4.

¹⁵ *Id.* at 19:17-20:17.

¹⁶ *Id.* at 20:19-21:14.

¹⁷ *Id.* at 23:4-23:25.

¹⁸ *Id.* at 24:7-24:10.

¹⁹ *Id.* at 24:11-24:17.

²⁰ *Id.* at 24:18-25:6.

²¹ *Id.* at 25:11-25:19.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. B-2096

Page 4

home care agency provider and that DHHS ultimately determined she was a good candidate to provide services.²² Ms. Clouse stated that she has changed her life and has not been in trouble since being released.²³ Ms. Clouse stated that in her current business she had no issues maintaining insurance, has been required to handle business funds without any issues, and has transported individuals without incident.²⁴

Following questions from Commissioners, Ms. Clouse stated that the vehicles owned by Applicant would be worth approximately \$10,000 to \$15,000 each.²⁵ Regarding the commingling of the businesses, Ms. Clouse stated that some of the employees at her current business may operate as drivers and that many of their current clients may also be transportation customers.²⁶ Ms. Clouse stated that all of their current clients are DHHS clients.²⁷ Ms. Clouse stated that she believes that there is a need for the business based on information from their current clients and discussions with the transportation carrier Comfort Squad.²⁸ Ms. Clouse stated that none of her employees have a criminal background like hers.²⁹

Next to testify was Dillon Keiffer-Johnson, the Commission's Motor Transportation Director. Exhibit 11 was entered on the record, which is an email chain between Mr. Keiffer-Johnson and DHHS regarding the background check services DHHS does for applicants.³⁰ It was provided that DHHS checks the Nebraska Data Exchange Network, the Nebraska Sex Offender Registry, the Office of the Inspector General, and the Nebraska Medicaid Excluded

²² *Id.* at 25:20-26:1; 38:10-39:14.

²³ *Id.* at 26:19-27:6.

²⁴ *Id.* at 27:8-28:14.

²⁵ *Id.* at 29:7-29:11.

²⁶ *Id.* at 29:20-32:6.

²⁷ *Id.* at 33:19-33:22.

²⁸ *Id.* at 34:7-35:25.

²⁹ *Id.* at 36:16-36:18.

³⁰ *Id.* at 48:21-49:12.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. B-2096

Page 5

Provider list.³¹ Next, Exhibit 12 was entered on the record, which are the DHHS screening guidelines for providers.³²

O P I N I O N A N D F I N D I N G S

The statutory standard governing the approval of applications for common carrier authority is governed by Neb. Rev. Stat. § 75-311(1) and the standard for Medicaid nonemergency medical transportation services is governed by Neb. Rev. Stat. § 75-311(3), which provide that:

(1) A certificate shall be issued to any qualified applicant authorizing the whole or any part of the operations covered by the application if it is found after notice and hearing that (a) the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of sections 75-301 to 75-322 and the requirements, rules, and regulations of the commission under such sections and (b) the proposed service, to the extent to be authorized by the certificate, whether regular or irregular, is or will be required by the present or future public convenience and necessity. Otherwise the application shall be denied.

[. . .]

(3) A designation of authority shall be issued to any regulated motor carrier holding a certificate under subsection (1) of this section or a permit under subsection (2) of this section authorizing such carrier to provide medicaid nonemergency medical transportation services pursuant to a contract with (i) the Department of Health and Human Services, (ii) a medicaid-managed care organization under contract with the department, or (iii) another agent working on the department's behalf as provided under section 75-303.01, if it is found after notice and hearing from the application or from any hearing held on the application that the authorization is or will be required by the present or future convenience and necessity to serve the distinct needs of medicaid clients. In determining whether the authorization is or will be required by the present or future convenience and necessity to serve the distinct needs of medicaid clients,

³¹ *Id.* at 51:7-51:12.

³² *Id.* at 52:2-52:25.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. B-2096

Page 6

the commission shall consult with the Director of Medicaid and Long-Term Care of the Division of Medicaid and Long-Term Care of the department or his or her designee.

The Nebraska Supreme Court has explained the analysis required for determining public convenience and necessity:

In determining public convenience and necessity, the deciding factors are (1) whether the operation will serve a useful purpose responsive to a public demand or need, (2) whether this purpose can or will be served as well by existing carriers, and (3) whether it can be served by the Applicant in a specified manner without endangering or impairing the operations of existing carriers contrary to the public interest.³³

The Nebraska Supreme Court has also found that a lack protests and no one intervening in a proceeding is a clear indication that existing motor carriers do not expect to suffer any material detriment from the grant of authority sought. No protests were filed to this application thus no showing has been made that the services proposed by Applicant can or will be served as well by existing carriers nor would existing carriers be endangered or impaired by granting the application.

First, Applicant has provided sufficient evidence as to their financial fitness to provide the proposed services. Applicant indicates that it will utilize a 2010 Dodge Caravan, a 2013 Dodge Caravan, and a 2010 Kia Rio in its operation. Applicant noted that it owns each of these vehicles. Further, Applicant provided that it has more than the \$45,000 of assets.

Next, Applicant has provided sufficient evidence of managerial fitness. Applicant has been operating a home healthcare business for about a year and a half and has three years of managerial experience. Applicant also has education experience, which includes education in business administration.

Finally, Applicant's criminal background does not make them unfit to provide the proposed services. Since Applicant's record includes no criminal offenses since 2012, how long ago these offenses occurred reduces some concern with her background. Such

³³ *In re Application of Nebraskaland Leasing & Assocs.*, 254 Neb. 583, 591 (1998).

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. B-2096

Page 7

concerns are lessened even further by the fact that Applicant has received rehabilitative programming since these offenses. Ms. Clouse further testified that in her current business she had no issues maintaining insurance, has been required to handle business funds without any issues, and has transported individuals without incident. That Applicant has successfully been operating a business without harm to the public supports that Applicant may also provide transportation services without endangering the public. While the Commission must make its own determination as to an Applicant's fitness, that DHHS has authorized Applicant as a DHHS provider further bolsters the determination that Applicant is fit to provide the proposed transportation services.

In addition to the statutory requirement that Applicant be fit, willing, and able, the Applicant must also show that the services are or will be required by the present or future public convenience and necessity.

Pursuant to the Commission's Rule of Modified Procedure, the Applicant has provided an Affidavit of Applicant and an Affidavit of Supporting Shipper.

The Affidavit of Supporting Shipper states that the Applicant has a reputation as trustworthy. The Affidavit further indicates that transportation services of other carriers are inadequate as most are not reliable, are not available when needed, require too much advance notice, or their equipment is not up to par. The affidavit further stated that Applicant has numerous vehicles available, their drivers are trustworthy, and their staff are trained in working with developmentally disabled individuals.

The Commission also received a letter dated March 18, 2024, from the Nebraska Department of Health and Human Services' Medicaid and Long-Term Care Division that Applicant's services are or will be required by the present or future convenience and necessity to serve the distinct needs of Medicaid clients within their requested territories.

After due consideration of the evidence and being fully advised in the premises, the Commission is of the opinion and finds:

1. Applicant is fit, willing, and able to perform the proposed service, and to conform to the provisions of

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. B-2096

Page 8

Neb. Rev. Stat. §§ 75-301 to 75-322 and the requirements, rules and regulations of the Commission thereunder.

2. The proposed service is or will be required by the present or future public convenience and necessity.
3. Upon compliance with Neb. Rev. Stat. §§ 75-305 (fees), 75-307 (insurance), and 75-308 (rates), and with the rules and regulations of the Commission, a Certificate of Authority should be issued as follows:

CERTIFICATE AUTHORIZED

SERVICE AND TERRITORY AUTHORIZED:

Common: Transportation of passengers in Open Class service by sedan, van, and SUV, in and between points in Douglas, Sarpy, Cass, Washington, Polk, Dodge, Cheyenne, Gage, York, Lincoln, Grant, Burt, Boyd, Colfax, Holt, Butler, Franklin, Howard, Dawes, and Scotts Bluff counties over irregular routes.

HHS Designation: Yes.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. B-2096 be, and it is hereby, granted; and that upon compliance with the terms and conditions set forth in this Order, a Certificate of Authority shall be issued to Happy Moments Healthcare, Omaha, in Application B-2096, authorizing the operations set forth in the foregoing findings.

IT IS FURTHER ORDERED that Applicant shall not be issued the Certificate authorized by the Commission unless and until Applicant has fully complied, within a reasonable time from the effective date of this Order, with Neb. Rev. Stat. §§ 75-305 (fees), 75-307 (insurance), and 75-308 (rates) and with the rules and regulations of the Commission, and if upon expiration of such time Applicant has not complied with such terms and conditions, this Order shall, after reasonable notice to Applicant, be of no further force and effect.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. B-2096

Page 9

IT IS FURTHER ORDERED that Applicant shall not conduct operations until a Certificate of Authority is issued.

IT IS FINALLY ORDERED that the operations authorized herein shall be subject to the terms, conditions, and limitations which have been, or may hereafter be prescribed by the Commission.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 10th day of December 2024.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Eric M. Hamler
[Signature]
Tim Schram
Kevin Stocker

[Signature]
Chair

ATTEST:

Thomas W. Golden
Executive Director