

SECRETARY’S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. B-2091
of God's Will Trans, Lincoln,)	
seeking authority as a contract)	
carrier in Nebraska intrastate)	
commerce in the transportation)	
of passengers in Open Class)	
service by sedan, van, and SUV)	
between all points in Nebraska)	ORDER DENYING APPLICATION
over irregular routes pursuant)	
to a contract with the Nebraska)	
Department of Health and Human)	
Services, a medicaid-managed)	
care organization under contract)	
with NDHHS, or another agent)	
working on behalf of NDHHS. HHS)	
Designation: Yes.)	Entered: December 10, 2024

BY THE COMMISSION:

On May 15, 2024, God’s Will Trans, (“Applicant”) Lincoln, filed an application seeking authority as a contract carrier in Nebraska intrastate commerce in the transportation of passengers in Open Class service by sedan, van, and SUV between all points in Nebraska over irregular routes pursuant to a contract with the Nebraska Department of Health and Human Services, a medicaid-managed care organization under contract with NDHHS, or another agent working on behalf of NDHHS. HHS Designation: Yes.

Notice of the application was published in The Daily Record on May 24, 2024. On June 20, 2024, a joint protest was timely filed by Camelot Transportation, Inc. and Triumph Transportation, Inc (“Protestants”). On July 10, 2024, the joint protest was granted.

The Commission received a letter dated June 3, 2024, from the Nebraska Department of Health and Human Services’ (“DHHS”) 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.¹

¹ Exhibit 1.

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On July 24, 2024, a planning conference was held with the parties in this matter to discuss a procedural schedule and hearing dates. On July 31, 2024, the Hearing Officer entered an order adopting a procedural schedule and scheduling a hearing for Tuesday, September 10, 2024.

EVIDENCE

On September 10, 2024, a hearing was held before the Commission in Lincoln, Nebraska. Adam Kost and Andy Pollock of the law firm Rembolt Ludtke appeared on behalf of Protestants. Alex Timperley appeared on behalf of Commission staff.

Exhibits

A copy of the application, including an attestation from the Nebraska Department of Health and Human Services, was entered into the record as Exhibit 1. Publication of notice of the application in The Daily Record was entered as Exhibit 2. Protests filed by Camelot Transportation, Inc. and Triumph Transportation, Inc. were entered as Exhibit 3. A hearing officer order granting the protest was entered as Exhibit 4. A hearing officer order scheduling the planning conference was entered as Exhibit 5. A hearing officer order setting the procedural schedule and scheduling the hearing was entered as Exhibit 6. A hearing officer order amending the prior order setting the procedural schedule and scheduling the hearing was entered as Exhibit 7. Notice of the hearing published in The Daily Record was entered as Exhibit 8.

Protestants requested that the Certificate of Public Convenience and Necessity of Triumph Transportation (B-1798) and Camelot Transportation (B-1802) be entered into the record. The hearing officer entered these certificates into the record as Exhibits 9 and 10, respectively.

Applicant Testimony

Momo Sarpay, representative of Applicant, testified first. Mr. Sarpay testified that he has been working in the human service field since he started living in the United States 8-9 years ago.² Mr. Sarpay attended Southeast Community College, receiving

² Hearing Transcript at 13:7-15; 14:23-15:6 (September 10, 2024).

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associates degrees in business administration and IT support.³ In addition to his positions in the human service field, Mr. Sarpay stated he had been working as a non-emergency medical transportation driver for a year for Mallay Transport.⁴ Mr. Sarpay stated that there are a lot of trips coming in to the point where it leads to some people missing appointments or waiting almost an hour to be picked up.⁵

Following questions from Commission Staff, Mr. Sarpay stated that as of right now he would be the sole individual involved in the business⁶ and that he owns a 2005 Camry and intends to purchase a wheelchair accessible vehicle for his intended operation.⁷ Mr. Sarpay stated that the main focus of his business will be in Lincoln and Omaha and the surrounding area.⁸ Mr. Sarpay said that he currently provides full-time transportation services for Mallay Transportation in Omaha, Lincoln, Hastings, and a few other cities.⁹ Mr. Sarpay stated that he has a vehicle, \$96,000 in cash and a house which he intends to use as an office.¹⁰ Mr. Sarpay stated that if approved he intends to operate consistent with Commission and DHHS requirements.¹¹

In response to Commission staff questions about the need for the proposed services, Mr. Sarpay said that there is a need based on his personal experience as a driver.¹² Mr. Sarpay said that there have been many instances where passengers have been late to appointments and instances where passengers have waited hours for a return ride.¹³ Mr. Sarpay said that carriers are late

³ *Id.* at 13:15-14:12.

⁴ *Id.* at 15:7-25.

⁵ *Id.* at 15:17-16:5.

⁶ *Id.* at 17:14-18:3.

⁷ *Id.* at 18:4-19:11.

⁸ *Id.* at 19:12-20:3.

⁹ *Id.* at 20:4-21:3.

¹⁰ *Id.* at 21:6-13.

¹¹ *Id.* at 27:16-19.

¹² *Id.* at 29:10-30:3.

¹³ *Id.* at 29:13-20.

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frequently.¹⁴ Mr. Sarpay also said that sometimes there are not enough rides and that maybe one or two days a week he is sitting in the car waiting for the next appointment.¹⁵ When asked what would be different about his carrier as opposed to other carriers, Mr. Sarpay stated that his main focus would be to make sure that they arrive for their appointments on time and taken back home on time.¹⁶ Mr. Sarpay stated that he would not take trips he is unable to do just for money, but wants to render the best service possible.¹⁷ When asked whether Mr. Sarpay had done research into the need for additional carriers in the area, Mr. Sarpay stated that he tried doing research but followed up by saying that it is based on his personal experience.¹⁸ When asked by Commission Staff why his services would be better able to serve the market than current carriers, Mr. Sarpay said that he was not testifying to demean other carriers, but that he thinks there is a void in the market and that there is a big market.¹⁹

In response to Commissioner questions Mr. Sarpay stated that he believed that his LLC was in good standing with the Secretary of State's Office.²⁰ Mr. Sarpay further stated that his financials provided in his application are mostly estimates.²¹ Mr. Sarpay stated that his assertion that the population is being poorly served was based on his personal experience where he was late and provided an example while stating that it was not his fault.²²

Mr. Sarpay stated that while he listed four names on his application who could testify regarding his services, those individuals were not able to appear to testify regarding the application.²³ Mr. Sarpay stated that the broker would be the one

¹⁴ *Id.* at 30:4-7.

¹⁵ *Id.* at 30:7-13.

¹⁶ *Id.* at 30:21-24.

¹⁷ *Id.* at 30:25-31:3.

¹⁸ *Id.* at 31:20-25.

¹⁹ *Id.* at 34:3-24.

²⁰ *Id.* at 36:7-9.

²¹ *Id.* at 36:23-37:13.

²² *Id.* at 38:6-39:25.

²³ *Id.* at 42:13-25.

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doing background checks for drivers and intends to do his own background checks.²⁴

Next, Mr. Kost cross-examined Mr. Sarpay. Mr. Sarpay stated that before he immigrated to the U.S. he operated a rice store with his mother, but that he has never managed his own transportation business.²⁵ Mr. Sarpay again stated that there were instances where he was the driver where passengers had to wait for him in the company that he currently drives for but said that there was nothing personally he could have done.²⁶ Mr. Kost requested judicial notice of the Certificate of Public Convenience and Necessity of Mallay Transport, LLC which only authorizes operation in Lancaster and Douglas counties and the hearing officer granted that request.²⁷ Mr. Sarpay stated that he believed that the trip he took for Mallay Transport to Hastings occurred sometime in the prior year.²⁸

In response to cross-examination regarding how Mr. Sarpay came up with an estimated 15 or 16 trips per day, Mr. Sarpay stated that it was just based off of his personal experience and not any research.²⁹ Mr. Sarpay further stated that he was not aware of how many open class providers provide service for DHHS in Lancaster, Douglas, and Sarpy counties.³⁰

Mr. Kost then provided a demonstrative to the Commission based on the Commission's website of taxicab and open class providers in Lancaster, Douglas, and Sarpy Counties.³¹ Mr. Sarpay stated that he could not argue with the representation that there are approximately 53 carriers authorized to provide DHHS services within Lancaster, Douglas, and/or Sarpy counties.³² When asked by

²⁴ *Id.* at 44:6-45:13.

²⁵ *Id.* at 49:9-49:23.

²⁶ *Id.* at 51:14-52:5.

²⁷ *Id.* at 54:4-16.

²⁸ *Id.* at 54:23-56:23.

²⁹ *Id.* at 58:15-59:18.

³⁰ *Id.* at 60:4-60:12.

³¹ *Id.* at 60:13-21.

³² *Id.* at 61:5-14.

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Mr. Kost to explain what gap in service currently exists, Mr. Sarpay stated that he did not know about a specific gap, just that he believes there is room for improvement.³³ Mr. Sarpay stated that he did not conduct a market study to assess current need.³⁴

Protestant Witness Testimony

Next to testify was Jermaine Payton, driver and fleet manager for Protestant, Camelot Transportation. Mr. Payton stated that he had been driving for Camelot Transportation for fifteen years. Mr. Payton stated that he does a lot of Omaha trips, but does trips throughout the state.³⁵ Mr. Payton stated that he drives about six days a week for about six to eight hours per day.³⁶ Mr. Payton said that he is paid hourly, if there are no trips then he does not get paid, and he would ideally like to be driving eight to ten hours per day.³⁷ Mr. Payton stated that he is not working his ideal amount because there are too many providers.³⁸

In response to Commission staff questions, Mr. Payton stated that he has never turned down trips and that he could recall no instances where timeliness impacted the ability for someone to be at their appointment.³⁹

In response to Commissioner questions, Mr. Payton stated that he is a supervisor for Protestant and is responsible for approximately 16 vans.⁴⁰

Next to testify was Terri Barry, office and operations manager for Camelot Transportation, Protestant. Ms. Barry stated that she has worked for Camelot for eleven years, five of which as office

³³ *Id.* at 62:1-18.

³⁴ *Id.* at 62:19-21.

³⁵ *Id.* at 68:13-20.

³⁶ *Id.* at 68:24-69:4.

³⁷ *Id.* at 69:5-15.

³⁸ *Id.* at 69:13-24.

³⁹ *Id.* at 70:16-71:13.

⁴⁰ *Id.* at 71:21-72:11.

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and operations manager.⁴¹ Ms. Barry stated that Camelot Transportation and Triumph Transportation first received Certificates of Public Convenience and Necessity in 2011 and that these certificates authorize statewide service.⁴² Ms. Barry disagreed with Applicant's statement regarding how the background check process unfolds, stating that the employer provides all background checks.⁴³ Ms. Barry also stated that the certificates for Protestants authorize business with DHHS and that Medicaid makes up about 40% of Protestant's business and child and family services makes up about 30% of Protestant's business.⁴⁴

Ms. Barry said that trips have declined in the 11 years she has worked for Protestant and stated that she is told that this is because there are too many providers.⁴⁵ Ms. Barry said that there has also been an increase in applications.⁴⁶ Ms. Barry stated that when their trips are down she reaches out to DHHS, Medicaid, and other providers to notify them that Protestant has drivers sitting and they need work.⁴⁷ She further said that they have authority statewide and have the resources to station a driver any place in the state so she is constantly reaching out to brokers to ask where there is a need.⁴⁸ Ms. Barry stated that based on her experience there is not a need for the services being requested by Applicant.⁴⁹

Ms. Barry stated that Protestant has fifteen drivers in Lincoln and the surrounding area and for Omaha and the surrounding area that number is around 20 drivers.⁵⁰ She further stated that if there was any additional need in any county in Nebraska that Camelot has the resources and capacity to fulfill that need.⁵¹

⁴¹ *Id.* at 74:23-75:1.

⁴² *Id.* at 75:2-23.

⁴³ *Id.* at 75:24-76:16.

⁴⁴ *Id.* at 77:17-24.

⁴⁵ *Id.* at 77:25-78:22.

⁴⁶ *Id.* at 79:3-10.

⁴⁷ *Id.* at 80:10-16.

⁴⁸ *Id.* at 80:17-81:1.

⁴⁹ *Id.* at 81:13-82:15.

⁵⁰ *Id.* at 82:20-83:7.

⁵¹ *Id.* at 83:24-84:15.

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Upon Commission staff questioning, Ms. Barry stated that she estimated that about once a month someone needs NEMT transportation and there is not a driver available.⁵² She further stated that she has not received complaints about a lack of NEMT carriers or the timeliness of carriers.⁵³

In response to Commissioner questions, Ms. Barry stated that statewide their fleet is 75 units and their driver pool is 55 drivers.⁵⁴ Ms. Barry estimated that their fleet utilization rate was about 65% and that they are sitting idle about one-third of the time.⁵⁵ Ms. Barry also stated that Protestant has rejected trips in the past year because they are sent wheelchair trips which they cannot perform and that they have a policy that after three no-shows by a client they no longer take those clients because they do not get reimbursed for no-shows.⁵⁶ She said that the only other reason for rejecting clients would be driver availability but that generally would never happen.⁵⁷

F I N D I N G S

The statutory standard governing the approval of applications for contract carrier authority is governed by Neb. Rev. Stat. § 75-311(2) and the standard for Medicaid nonemergency medical transportation services is governed by Neb. Rev. Stat. § 75-311(3), which provide that:

(2) A permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application if it appears after notice and hearing from the application or from any hearing held on the application that (a) the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of such sections and the lawful requirements, rules, and regulations of the

⁵² *Id.* at 84:23-85:4.

⁵³ *Id.* at 85:5-85:11.

⁵⁴ *Id.* at 86:23-87:10.

⁵⁵ *Id.* at 87:20-88:8.

⁵⁶ *Id.* at 89:9-25.

⁵⁷ *Id.* at 90:7-10.

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commission under such sections and (b) the proposed operation, to the extent authorized by the permit, will be consistent with the public interest by providing services designed to meet the distinct needs of each individual customer or a specifically designated class of customers as defined in subdivision (7) of section 75-302. 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, 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 whether the operation of a proposed contract carrier will be consistent with the public interest:

"In considering an application for a permit to operate as a contract carrier, the burden is upon the applicant to show that the proposed service is specialized and fits the need of the proposed contracting shippers, that the applicant is fit, willing, and able to perform the service, and that the proposed operation will be consistent with the public interest."⁵⁸

⁵⁸ *Wells Fargo Armored Service Corp. v. Bankers Dispatch Corp.*, 188 Neb. 584, 198 N.W.2d 195 (1972) (Internal citations omitted).

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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.⁵⁹

An applicant for contract carrier authority and for authority to provide NEMT services must prove that it is fit, willing, and able to provide the proposed service. When determining fitness, the Commission examines Applicant's financial capabilities and managerial fitness. Upon review of the evidence presented, the Commission find that Applicant has meet its burden of proof regarding fitness.

Regarding financial fitness, Mr. Sarpay provided evidence that Applicant owns a vehicle, has funds set aside for the business, and a location available for an office.⁶⁰ Mr. Sarpay provided estimates of anticipated revenue and expenses sufficient to show that Applicant would be financially fit to provide services. Regarding managerial fitness, Applicant provided evidence of prior experience as an NEMT driver,⁶¹ previous experience operating a business,⁶² and stated a willingness to comply with Commission and DHHS requirements.⁶³

Applicants for contract carrier authority must show that the proposed operation will be consistent with the public interest. Since Applicant seeks to provide services pursuant to a contract with DHHS, a medicaid-managed care organization under contract

⁵⁹ *In re Application of Nebraskaland Leasing & Assocs.*, 254 Neb. 583, 591 (1998).

⁶⁰ *Id.* at 21:6-13.

⁶¹ *Id.* at 15:7-25.

⁶² *Id.* at 49:9-49:23.

⁶³ *Id.* at 27:16-19.

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with DHHS, or another agent working on behalf of DHHS whether the operation would be consistent with the public interest is informed by the requirements laid out by the Legislature under Neb. Rev. Stat. § 75-311(3) regarding NEMT services. Under Neb. Rev. Stat. § 75-311(3), Applicant must show whether the proposed service is or will be required by public convenience and necessity.

Applicant has not provided sufficient evidence that the proposed services cannot or will not be served as well by existing carriers. While Mr. Sarpay testified that in his personal experience there is an issue with existing carriers providing timely service,⁶⁴ Mr. Sarpay's experience extends only to services provided by one carrier, Mallay Transport,⁶⁵ out of approximately 53 carriers authorized to provide similar service within the proposed territory.⁶⁶ When asked what would be different about his services as opposed to other carriers, Mr. Sarpay stated that his main focus would be to make sure that clients arrive and are returned home in a timely manner.⁶⁷ However, it is unclear how that would differ from other carriers, since presumably that would be a primary goal of any carrier. Further, Protestants expressed a willingness to provide the services proposed and testified that they had the resources to provide any additional services if required.⁶⁸ Ms. Barry said that only about once a month someone needs NEMT transportation and they have no driver available;⁶⁹ said she has not received complaints about a lack of NEMT carriers or the timeliness of carriers;⁷⁰ and said that their fleet is sitting idle about one-third of the time.⁷¹ Insufficient evidence was presented for the Commission to believe that the proposed service in the proposed territories could not be served as well by existing carriers.

⁶⁴ Hearing Transcript at 29:13-20 (September 10, 2024)

⁶⁵ *Id.* at 38:6-39:25.

⁶⁶ *Id.* at 61:5-62:18.

⁶⁷ *Id.* at 30:21-24.

⁶⁸ *Id.* at 82:20-84:15.

⁶⁹ *Id.* at 84:23-85:4.

⁷⁰ *Id.* at 85:5-85:11.

⁷¹ *Id.* at 87:20-88:8.

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Additionally, Applicant must show that the public demand or need can be served without endangering or impairing the operations of existing carriers, contrary to the public interest. Mr. Sarpay stated that Applicant did not conduct market research regarding the need for services proposed and did not contact other carriers currently providing the services.⁷² Mr. Sarpay himself acknowledged that sometimes there are not enough rides and that at his current position there are about one or two days a week where he is sitting in his car waiting for the next appointment.⁷³ Ms. Barry testified that DHHS services make up a significant portion of their business⁷⁴ and that demand for DHHS transportation has decreased over the last eleven years because there are too many providers.⁷⁵ Mr. Payton, a driver for Protestant, also testified that he was not working the amount that he ideally would like to because in his opinion there were too many providers.⁷⁶ Mr. Sarpay has provided limited evidence that the proposed services would not harm existing carriers, and Protestants provided substantial evidence that their operation could be harmed.

Based on the evidence presented the Commission finds that Applicant B-2091 should be denied because Applicant has not shown that its proposed services are or will be required by the present or future convenience and necessity to serve the distinct needs of medicaid clients under Neb. Rev. Stat. § 75-311(3). Further, because Applicant has not met the public convenience and necessity requirement, Applicant has not shown that its operation will be consistent with the public interest under Neb. Rev. Stat. § 75-311(2).

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-2091 be, and is hereby, denied.

⁷² *Id.* at 62:19-21.

⁷³ *Id.* at 30:7-13.

⁷⁴ *Id.* at 77:17-24.

⁷⁵ *Id.* at 77:25-78:22.

⁷⁶ *Id.* at 69:13-24.

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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