

Maryland Transit Administration

Petitioners

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Agency

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Parties

1. The Central Maryland Council of the Blind (CMCB) constitutes a non-profit advocacy and education organization that has affiliation with the American Council of the Blind of Maryland. CMCB advocates for the protection of civil rights of people who are blind, vision impaired or are newly experiencing the same. CMCB is active in the State of Maryland.
2. The Maryland Area Guide Dog Users, Inc. (MAGDU), constitutes a Maryland non-stock corporation, and fully approved non-profit advocacy and education organization in the state, which advocates and educates about the civil rights of the handlers of guide dogs and guide dogs in training. MAGDU also possesses affiliation with ACBM. MAGDU is active in the state of Maryland.
3. The National Council for the Support of Disability Issues (NCSD) constitutes a non-profit cross-disability advocacy and education organization that advocates for and educates about the issues of people with disabilities. Active nationally, the work of this fully approved non-profit has included advocating for accessible and reliable transportation services in the state of Maryland. NCSD is active in the state of Maryland.
4. James P. Childs Transportation Co. is a corporation registered under the laws and regulations of Maryland. It is a fore-hire transportation service, is a minority-owned provider under Taxi Access and is active in the state.

Interests

In-keeping with the laudable statement found in the Annotated Code of Maryland that people with disabilities will be full members of the workforce, accessible and reliable transportation and fair and transparent procedures and requirements that ensure the same, are the interests that the petitioners seek to address in this action and are germane to the organizations' purposes.

5. Petitioners' members reside, work and enjoy recreational opportunities in the State of Maryland.
6. The interests that Petitioners' members, seek to protect, include: the acquisition and retention of gainful employment, the enjoyment of professional activities, events and trainings and participation in the life of the community, all of which affordable and timely transportation services engenders. Because of the flawed attitude and misguided policy stances of the MTA, they are being, and will be, adversely affected by failure to adopt policies, procedures, rules and/or regulations that are fair and transparent and that value the advance input of such petitioners.
7. James P. Childs Transportation, Co. comprises a minority-owned business, which entered the Taxi Access program not only to earn "a living," but also to perform a vital and good public service by furnishing reliable and time appropriate transportation to people with disabilities. The interests of this provider are the continued sustainability of

his business venture and the provision of reliable and time appropriate transportation to people with disabilities.

The Nature of the Problem

8. The December 2002 report of the Governmental Accounting Office to the U.S. Congress stated that, for people transitioning from welfare to work, which considering the high unemployment rate among people with sight disabilities seems particularly applicable herein, “public transportation facilities, such as, buses or subways, often offer limited or no access to many of the places where jobs are located.” Gov’t. Accounting Office Rpt. To U.S. Cong. (Dec. 2002), GAO-03-204 Welfare Reform: Job Access Program Improves Local Service Coordination, but Evaluation Should Be Completed, <http://www.64.233.169.104/search?q=cache:Iq50QN5TcfsJ:www.gao.gov/cgi-bin/getrpt%3FGAO-03-204+history+of+taxi+access+program+in+maryland&hl=en&ct=clnk&cd=15&gl=us> (Visited Mar. 24, 2008).

9. Affordable and reliable transportation systems and resources constitute a barrier for people with disabilities in Maryland to acquire and retain gainful employment and to otherwise engage in the life of the community. Ruben Castaneda, Md., Disabled Commuters Settle Suit, Wash. Post P. D-04 (Wens, Dec. 28, 2005), Md., Disabled Commuters Settle Suit, <http://www.washingtonpost.com/wp-dyn/content/article/2005/12/27/AR2005122701083.html> (Visited Mar. 24, 2008).

Problems with Maryland Paratransit – Mobility

10. A 2002 assessment conducted by the Federal Transit Administration noted myriad pieces of correspondence indicating complaints with the service delivery of the MTA paratransit program, which, included: missed and/or late trips, scheduling errors and driver rudeness. Office of Civ. Rights, Fed. Transit Admin., Assessment of ADA Complementary Paratransit Service: Capacity Constraints, Findings F. - Service Provision (June 17-21, 2002), MTA - ADA Complementary Paratransit Service Assessment Final Report, http://64.233.169.104/search?q=cache:8C3NKbw8RHcJ:www.fta.dot.gov/documents/Baltimore_PT_Final_Report_030116.doc+maryland+disability+law+center+and+the+maryland+transit+administration&hl=en&ct=clnk&cd=5&gl=us (Visited Mar. 24, 2008). The assessment noted that the eligibility process could benefit from improvements even though the staff for the program does their best to provide notifications, if any, when eligibility will elapse, and to process such applications or reapplications for eligibility expeditiously. Id. Of most importance, the assessment reflected that the paratransit program does not provide a clear and neutral appeals process for eligibility denials. Id. In addition, the appeals process should be revised to furnish rights of appeals directly to an external third party, the Office of Hearings and Appeals. Id.

11. In October, 2003, the Protection and Advocacy Service of Maryland, named the Maryland Disability Law Center, filed litigation in federal court for violations under Title

II of the Americans with Disabilities Act in the delivery of paratransit services. Pub. P. Rpt. (2004), MD Disability Law Center, http://www.64.233.169.104/search?q=cache:olWxlJ3Um-UJ:www.mdlebalto.org/worddocs/2004legislative_budget_report.doc+Maryland+disability+law+center+and+the+maryland+transit+administration&hl=en&ct=clnk&cd=2&gl=us (Visited Mar. 23, 2008).

History of Taxi Access – A Benefit for Many until Recent Times

12. The previous administration parlayed the opportunity of the mass advocacy efforts and litigation of the MDLC to craft a new program, called Taxi Access, to evidence a response to the concerns with the service delivery of paratransit. Profile: MJ Management Services, <http://64.233.169.104/search?q=cache:GTKcjlOpb7AJ:www.mentoreng.com/assets/part> (Visited Mar. 25, 2008).

13. Conceived in 2004, the intent of the program is, and has historically been, to provide same-day, responsive and flexible transportation options for people with disabilities. Id. Instead of needing to await a bus or other mode of conveyance of paratransit that may or may not appear and that may or may not deliver an individual rider to an appointment and/or work on time, the benefits of the program are, and have historically been that people with disabilities, especially those who are tax payers and possess gainful employment, would be enabled to function as any other employed citizen, that is, decide who would and how they would transport to appointments and/or work in a cost-effective, safe and timely manner. Id. The additional benefit that people with disabilities experience, and have historically experienced under Taxi Access, is the ability to directly communicate with and schedule their trips with providers. Id.

14. Although it is claimed that Taxi Access constitutes a “premium service,” program participants are, and have historically been, required to pursue the certification process operated by the MTA for standard paratransit to gain eligibility to the program. Robert L. Ehrlich, Jr., Governor, Welcome to your new ride, Annual Rpt. (2005), our new attitude! <http://www.mtmaryland.com/about/annualreport/MTA%202005%20Annual%20Report> (Visited Mar. 25, 2008).

15. At its initial inception and up until recent months, a mixture of taxicab companies, including, yellow, (the taxicab company owned and operated by the owner of MJM Management, Inc., the contractor of Taxi Access,) and a myriad of sedan companies have possessed membership and certification to the program. Profile: MJ Management Services, <http://64.233.169.104/search?q=cache:GTKcjlOpb7AJ:www.mentoreng.com/assets/partn> (Visited Mar. 25, 2008). A benefit that providers, typically minority contractors, have expressed they experienced by joining and certifying to the Taxi Access program is a new source of reliable and steady business. Id. Initially created with four providers, the Taxi Access program eventually expanded to include some fourteen providers, many of who comprised sedan companies. Id.

Policies of Taxi Access – Not Permissibly Promulgated

16. The formal policies, procedures, rules and/or regulations that appear to govern Taxi Access that may be found on the Internet and/or on the website of the program, include, two versions – one that dates to 2002 and one that dates to an apparent revision of October, 2007. Never undergoing the kind of public scrutiny and input of affected parties called for under the Maryland Administrative Procedure Act, the versions are discussed below in applicable part.

A. 2002 and as updated in 2005

17. Called guidelines, the formal policies, procedures, rules and/or regulations for Taxi Access, only include that, for an ultimate cash exchange of \$3.00, an individual rider presents his or her card to the provider, and at the conclusion of the trip, signs an invoice/receipt upon such card being electronically scanned and verified. MTA, Guidelines for Taxi Access Customers, (2002 and 2005).

B. October, 2007

18. Called guidelines, the formal policies, procedures, rules and/or regulations for Taxi Access, received revisions to cause the program to be less inclusive and have strict requirements on ridership. The newest revisions, as of October, 2007, which were promulgated without a formal process and input, include:

- Always schedule rides with the transportation dispatch operator. You may not call drivers directly to arrange for your rides, request specific drivers, have a regular driver, take roundtrips with the same driver or arrange a schedule for standing rides.
- You must provide accurate pick up and drop off information to the dispatch operator. You may not alter your requested destination after the vehicle has arrived.
- You must present your valid Taxi Access card to the driver. You may not ask the driver to wait for you on any Taxi Access service ride. Call a participating company 40 minutes in advance. Check back on the status of your ride every 20 minutes.
- Pay Your Fare: You are responsible for paying \$ 3.00 cash per one- way ride.
- You are limited to four rides per day.
- The fare is limited to \$ 50.00 for each one- way ride. You are responsible for all fares amounts that exceed the \$ 50.00 trip limit in addition to the \$ 3.00 fare.
- You must keep Taxi Access receipts for at least six months for auditing purposes.
- Taxi Access cards will be immediately suspended due to any illegal, disruptive, or otherwise abusive behavior while using Taxi Access services. You will not be allowed to continue using Taxi Access service if you violate any policy. MTA,

Guidelines for Using Taxi Access, (Revised Oct. 25, 2007),
TaxiAccessServiceGuidelines_10_25_07.pdf, (Visited mar. 25, 2008).

19. The formal policies, procedures, rules and/or regulations for Taxi Access clearly identify that the MTA is the unit of government who, in connection with the contractor, is administering the program. The duties, among others, clearly indicated on the part of MTA in administering this program, include:

1. ...[R]outinely... [sending] reminder letters 90 days prior to customers' Taxi Access card expiring. Extensions are not granted for Taxi Access cards that expire. Id.

MTA Action and Attempts to Engage in Dialogue with Taxi Access

A. Constant Actions of the Contractor

20. To our knowledge and belief, increasing number of instances of complaints is arising under the Taxi Access program, which, include, actions towards consumers and providers alike. No independent eligibility and application process exists for the program. To our knowledge and belief, consumers, who are typically blind, will be called by the contractor if their signature contained on an invoice/receipt does not exactly match that on file. To our knowledge and belief, on at least one instance, the contractor, in violation of the ADA, told providers that a consumer has to disclose whether or not they use a dog guide. To our knowledge and belief, the contractor communicates policy, procedure, rule and/or regulatory changes to consumers, if at all, on an ad hoc basis and in inaccessible format. To our knowledge and belief, the contractor of the program relies on uncorroborated purported violations of the formal policies, procedures, rules and/or regulations to suspend consumers of the program. In one instance, to dispute a two-year suspension, based on uncorroborated evidence, the only appeals process that a consumer received consisted of a non-neutral, and what has been described as a conversation, farce.

Despite direct appeals to the Office of Hearings and Appeals as long ago as 2002, no transparent neutral appeals process exists to manage suspensions under the program.

21. Meetings of an advisory group called the Citizens Advisory Council on Accessible Transportation are supposedly and purportedly hosted to acquire comments of participants. These meetings are not formal and do not take a substantive part in reviewing proposed rule changes. E-mail from Gary Messman to Gary C. Norman, Esq. (Friday, November 16, 2007).

22. With reference to the revision to the guidelines of October, 2007, the contractor did not reveal such revisions until the November 15th, 2007, meeting of this group. Id. The contractor did not provide opportunities for advance input of the revisions either before or at this November meeting. Id. The contractor told attendees of this meeting that such revisions were in effect as of October, 2007. Id.

23. To our knowledge and belief, examples of actions of the contractor towards providers, includes, directly conducting telephone calls, admonishing them to not transport particular riders, and if they decide to do so, requiring such providers to only transport such riders a limited number of times a week or a month.

24. To our knowledge and belief, in November 2007, the contractor hosted a meeting with the sedan company provider community under the program to impose new requirements on rides.

To our knowledge and belief, those actions as well as changes to ridership are communicated directly to providers, without prior input of such providers and the consumers they transport. In addition, and to our knowledge and belief, similar actions are not undertaken towards taxicab companies.

B. Correspondence

25. To resolve the rising complaints under the Taxi Access program, advocates of people with disabilities have conveyed correspondence requesting a dialogue and responsive resolution on myriad occasions that are inclusive of the following dated letters:

1. October 3, 2007
2. October 30, 2007
3. November 2, 2007 – Demand to Cease and Desist
4. November 27, 2007
5. December 23, 2007
6. December 28, 2007
7. February 26, 2008, and
8. June 2008

Response – Shabby Indeed

26. After several months of no response, advocates finally met with the director of paratransit on April 25, 2008, where they received no substantive dialogue from the MTA. The Administrator of the MTA ordered the director to engage in that meeting, but at the same time, finally responded, indicating that the MTA could do whatever it deemed proper.

Authority for Petition

27. The Maryland Administrative Procedure Act, which is found at Md. Code Ann., (State Gov't. Art.), §§10-201-10-226 (2004, 2006 Supp.), requires units of state government, and contractors acting under their color, to promulgate rules and/or regulations in accordance with a robust process that involves advance notice and input. A regulation is defined by the Maryland Administrative Procedure Act as:

- g.1. ...[S]tatement or an amendment or repeal of a statement that--
 - i. Has general application
 - i. Has future effect
 - iii. Is adopted by a unit to--
 - 1. Detail or carry out a law that the unit administers
 - 2. Govern organization of the unit
 - 3. Govern the procedure of the unit, or
 - 4. Govern practice before the unit, and--
 - iv. Is in any form, including--
 - 1. A guideline
 - 2. A rule
 - 3. A standard
 - 4. A statement of interpretation, or
 - 5. A statement of policy. Secretary of Dept. of Public Safety and Correctional Services. v. Demby, 390 Md. 580, 890 A.2d 310 (Md. Jan. 17, 2006), Citing Maryland Code Ann., (State Government. Art.), §10-101(g).

**Analysis – Informal Regulation/Rule-making
MTA and MJM Have Promulgated Regulations – Illegally**

28. Evidently, officials, leadership and staff at the MTA, acting as delegates to the Department, deem they can promulgate, and in this instance, have promulgated policies, procedures and/or rules that are equal to regulations. In this instance, the guidelines indicated above constitute the regulation; the issue is that those regulations have not undergone advance input of parties affected by them. The additional important issue is that those regulations provide no neutral third party for suspensions or terminations under the program.

Surely, the public would be horrified to know the cavalier way in which the MTA treats people with disabilities, that is, by taking positions which further increase the challenge of their ability to be productive members of the community.

Due Process

29. In at least one or more instances, without the promulgation of a fair and transparent regulation, due process rights of program beneficiaries have been violated. The uncorroborated nature and unwarranted duration of suspensions or terminations from the program, because of the lack of a neutral third party review process would and will “shock the conscious” of the public. The form of due process, which is notably a flexible concept that is implicated by the MTA, is that of procedural due process.

Property Interest

30. The property interest that petitioners possess is a license. License means:

d... "License" means all or any part of permission that--

1. Is required by law to be obtained from an agency
2. Is not required only for revenue purposes, and
3. Is in any form, including--
 - i. An approval
 - ii. A certificate;
 - iii. A charter
 - iv. A permit, or
 - v. A registration. Warwick v. Dept. of Trans., 61 Md. App. 239, 486 A.2d 224, 228 (Jan. 9, 1985), citing Md. Code Ann., (State Gov't Art.), §10-201(d).

31. Due Process that is provided through a neutral, independent appeals process is guaranteed to participants of programs, where a property interest is indicated. Examples of property interest that trigger Due Process protections, include, driver licenses and welfare benefits. Bell v. Burson, 402 U.S. 535, 539-540, 91 S. Ct. 1586, 29 L.Ed.2d 90 (1971) (The entitlement to a driver's license under state law was deemed property for purposes of due process.) and Golberg v. Kelly, 397 U.S. 254, 90 S. Ct. 1011, 25 L.Ed.2d 287 (1970) (The entitlement to welfare benefits pursuant to federal and state programs was held to be property that could not be terminated without a pre-termination hearing.).

32. The Md. Dot constitutes a unit of government covered by the Maryland Administrative Procedure Act. Kaufman v. Taxicab Bureau, Baltimore City Police Dep't., 236 Md. 476, 204 A.2d 521 (1964), cert. Den'd. 382 U.S. 849, 86 S. Ct. 95, 15 L.Ed.2d 88 (1965). By extension, so are the MTA, and any contractor operated under its auspices.

33. Participants possess a property interest to what can be defined as a license to participate in the program. This property interest is analogous to the property interests that have been found in other contexts, particularly, as pertains to driver licenses supra.

The policies and/or procedures implemented by the contractor, with the knowledge of the MTA, fall within the definition of regulation set forth at §10-201 of the Annotated Code of Maryland. These policies and/or procedures have not, however, been subjected to the kind of public input and comment required under the Maryland Administrative Procedure Act.

34. Because of this informally promulgated regulation on the part of the MTA, and a lack of a neutral appeals process that is required in Maryland law to ensure that actions by governmental actors are fair and just, adverse actions have been and are being undertaken against participants that is not transparent or consistent with fundamental notions of fundamental fairness. According to representatives of the MTA, who acted with the full authority of the Administrator, at a meeting on April 25, 2008, the only review process for eligibility suspensions and/or terminations is an informal conversation. In at least one instance, a participant received a two-year plus suspension from the program, based on a non-neutral "conversation," for which there was no appeals process to a neutral party. Contending that the MTA does not need to provide Taxi Access and can therefore

terminate its existence at any time, the director of paratransit services indicated that Taxi Access is not subject to the appeal procedures, if any, provided under the ADA.

35. In this case, some kind of neutral independent appeals process is required in that petitioners listed above possess a property interest in their benefit, license or membership to use the program.

36. Per Md. Code Ann., State Gov't Art., §10-123, Petition for adoption of regulations, and specifically, COMAR §11.01.02.01 Et. seq., Department of Transportation, Office of the Secretary, petition for the adoption of regulations, "Any interested person may file a petition requesting the promulgation, amendment, or repeal of any regulation over which the Secretary has rulemaking authority."

37. Actions have been undertaken and are being undertaken against program participants and providers in a manner that is both adverse and also does not provide any neutral, independent course of redress that is provided through neither a robust rule-making nor a fair adjudicatory process. Thus, the parties hereby petition the Department to establish by rulemaking, fair and transparent policies, procedures, rules and/or regulations that involve the advance input of petitioners with respect to:

- Application and reapplication for participation in the program
- The use of the program with regard to such issues as the number of rides a day, etc.
- The scope and nature of an appeals process for suspensions and/or terminations from the program that is equal to or in addition to any appeals process provided under the paratransit program

Respectfully submitted,

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