

139391

September 26, 2001

DEPARTMENT OF TRANSPORTATION
01 SEP '01 AM 9:16

James Hawkins
14420 Curvin Drive
Stewartstown, PA 17363
717-993-3137

Docket Management Facility
U.S. Department of Transportation
Room PL-401
400 Seventh Street, SW
Washington, DC 20590
Fax: 202-493-2251

Docket ID: FMCSA-2001-9800 - 41

To Whom It May Concern:

I was diagnosed with diabetes in November 1989. I have been insulin dependent since July 1990. My employer, the Maryland Department of Transportation, Mass Transit Administration began requiring a class B license in 1991. The class B license was converted to a commercial driver's license.

In May 1995, I was required by the Maryland MTA to take a Federal Department of Transportation physical. Of course, I failed since I am insulin dependent. An insulin dependent diabetic is automatically disqualified from passing the DOT physical.

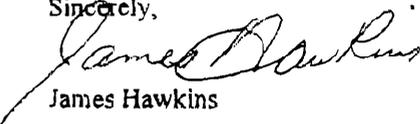
Initially, I was able to obtain a waiver for pre-existing condition from the Maryland Department of Transportation, Motor Vehicle Administration. I am a Pennsylvania resident who works for the State of Maryland. I am only required to operate a CDL vehicle within the State of Maryland. In 1997, the State of Maryland changed regulations and denied my waiver for pre-existing condition.

I attempted to bring this issue to light with Pennsylvania Department of Transportation officials and my state and federal representatives. These efforts proved to be fruitless. One Pennsylvania DOT official actually suggested that I move to Maryland in order to be able to obtain a waiver for pre-existing condition.

At present, I am still employed by the Maryland Department of Transportation. I am in a position that does not require a CDL. Due to the CDL requirements, my employment is severely limited within the State of Maryland and to other state's agencies or transportation companies that would need my particular job skills.

With the combination of current job skills and the CDL requirements, I am "stuck" with no upward or lateral job mobility. The Maryland Department of Transportation, Mass Transit Administration has employed me for 18 years. My ability to perform my job or my ability to drive a vehicle has never been affected by my diabetes.

Sincerely,



James Hawkins

Attachments:
MTA memorandum
MVA letter
Waiver
Revised waiver program
FTA letter
PennDOT letter
PennDOT letter

MARYLAND DEPARTMENT OF TRANSPORTATION

MASS TRANSIT ADMINISTRATION
300 West Lexington Street • Baltimore, Maryland 21201-3415

MEMORANDUM

TO: All MTA Employees Holding A Commercial Driver's License
FROM: Dean Adkins *DA*
Labor Coordinator
DATE: March 1, 1995
SUBJECT: COMMERCIAL DRIVER'S LICENSE PHYSICAL CERTIFICATION

The Enactment of COMAR 11.21.01 requires that all Maryland drivers holding a commercial driver's license submit to, and pass, a Federal Department of Transportation physical examination (No drug or alcohol test required).

All current CDL holders must be in compliance by the end of calendar year 1995, and the physical certification must be renewed every two years thereafter. Upon successful completion of the examination the examining physician will issue a certificate to the employee which must by law be kept on their person at all times while working.

The physical examination will be performed (at MTA expense) at Mercy Medical Center Corporate Care 301 St. Paul Place, Baltimore, Maryland 21202, seven (7) days a week. Employees will be notified by their supervisors regarding the time and date of their examination and will be given a form to be presented upon arrival at Mercy. Mercy's staff will complete and sign the form which the employee must return to their supervisor to account for the time spent in the examination process. Primary emphasis will be to schedule employees during normal paid work hours, but this may not always be possible for some members of ATU, Local 1300. In such cases the employee will be scheduled during off duty hours and paid in accordance with Article 10, section 4 of their labor agreement.

Thank you for your usual cooperation in this matter.

DAA/rh

cc: John A. Agro, Jr.
James F. Buckley
Senior Managers

My phone number (410) _____

FAX number (410) _____

TDD for people who are hearing and/or speech impaired _____



MARYLAND DEPARTMENT OF TRANSPORTATION
MOTOR VEHICLE ADMINISTRATION

David L. Winstead
Secretary

W. Marshall Rickett
Administrator

May 10, 1995

Mr. James Hawkins
RR 3 Box 323
Stewartstown, PA 17363

Dear Mr. Hawkins:

The Administration does not grant waivers for vision or for individuals who are insulin dependent due to diabetes. Individuals with these conditions may be eligible for a waiver for a pre-existing condition if:

- * They are otherwise qualified to have operated, and did operate a commercial motor vehicle in intrastate commerce on or before October 1, 1992;
- * They operated wholly within this state;
- * The medical condition existed on October 1, 1992, or at the time of the first physical examination after that date to which they submitted;
- * The physician certifies that the pre-existing condition has not substantially worsened since October 1, 1992, or the time of the first required physical examination after that date.

Waiver for pre-existing condition are signed by the examining physician. They may take the enclosed INTRASTATE Certificate of Qualification with Pre-existing Medical condition form (DL-6) and physical examination form to their physician. After the physician examines the individual, he may sign the waiver card if the individual is otherwise physically qualified.

-2-

The waiver is only valid in Maryland and must be in their possession whenever they are operating or in charge of a commercial motor vehicle. The waiver for pre-existing condition is valid for two years and the physical long form must be kept in driver's file by your employer.

Sincerely,

A handwritten signature in black ink, appearing to read "B D MacLean". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Bruce D. MacLean
Assistant Director
Division of Driver Licensing
and School Vehicle Safety

BDM/cp

attachments

**INTRA-STATE
Certificate of Qualification with
Pre-existing Medical Condition**

<i>JAMES N. HAWKINS JR</i>	NAME OF DRIVER
<i>216 88 1546</i>	SOCIAL SECURITY NUMBER
<i>James N. Hawkins Jr.</i>	SIGNATURE OF DRIVER

I certify that the above driver, is regularly driving a vehicle operated by the below named carrier and is fully qualified under COMAR 11.21.01. The current medical examiner's certificate expires on 7/12/97.

This certificate expires: (Date not later than expiration date of medical certificate.) 7/12/97

FOLD ON LINE

July 13, 1995	DATE ISSUED ON
Mass Transit Administration	NAME OF CARRIER ISSUED BY
1515 Washington Boulevard	ADDRESS
<i>Donald A. Rowh</i>	SIGNATURE
Superintendent	TITLE

DL-8 (2-94)

CDL PHYSICAL WAIVER PROGRAM

1. GENERAL: Individuals who do not meet the physical qualifications outlined in the Federal Motor Carrier Safety Regulations Title 49 CFR §391.41(b) (1) - (11) may be eligible for:

- A. An interstate waiver;
- B. An intrastate waiver; or
- C. A waiver for a pre-existing medical condition.

2. INTERSTATE WAIVERS:

A. The Federal Highway Administration (FHWA) may issue an interstate waiver to individuals who do not meet the qualifications of the Federal Motor Carrier Safety Regulations Title 49 CFR §391.41(b). Individuals requiring an interstate waiver may submit their request to the following:

The Regional Director
Motor Carrier Safety
City Crescent Building
10 Howard Street Suite 4000
Baltimore, Maryland 21201-2819
Telephone (410) 962-4571

B. The interstate waiver will allow individuals with a Commercial Driver's License (CDL) to drive a commercial motor vehicle (CMV) across state lines.

- C. FHWA will not issue an interstate waiver to anyone who:
- (1) Does not meet the vision requirements; or
 - (2) Is insulin dependent (oral or injection) due to diabetes.

3. INTRASTATE WAIVERS AND WAIVERS FOR A PRE-EXISTING MEDICAL CONDITION: Individuals who do not meet the physical requirements of §391.41(b) and cannot obtain a federal interstate waiver may apply for an intrastate waiver or a waiver for a pre-existing medical condition. Both waivers restrict the individual to driving a commercial motor vehicle within Maryland. Individuals with these waivers may not drive a commercial motor vehicle across state lines.

(1) **INTRASTATE WAIVER:** If they have suffered a loss of a hand, arm, or foot or if they have an impairment of a hand or finger which interferes with the prehension or power grasping or an arm, leg, or foot or other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with the operation of a commercial motor vehicle, they may be eligible for an intrastate waiver.

one) shall maintain a copy of the waiver in the individual's driver qualification file. The driver applicant shall have the waiver (or a legible copy) in her/her possession whenever he/she is operating a commercial motor vehicle.

19. REVOCATION OF WAIVERS: The Director, Driver Licensing/School Vehicle Safety, MVA may revoke a waiver after the person to whom it was issued is given notice of the proposed revocation and has been allowed a reasonable opportunity to respond.

20. MAB PANEL REVIEW: Individuals, whose waiver request has been disapproved, may request a MAB Panel Review. The individual will be contacted by the Medical Review Section and informed of the date and time the panel will convene. The results of the panel will be sent to the Division of Driver Licensing/School Vehicle Safety. The panel's opinion will be reviewed and the individual will be notified of the Motor Vehicle Administration's decision. The individual may appeal the decision by requesting an Administrative Hearing.

21. APPEALS: Individuals, who wish to appeal a denied waiver request, should submit their request for an Administrative Hearing to the:

Director
Division of Driver Licensing/School Vehicle Safety
Motor Vehicle Administration
6601 Ritchie Highway, N.E.
Glen Burnie, MD 21062

The appeal must include as a minimum the following information:

- * A statement as to why the denial should be withdrawn;
- * A statement from your physician concerning your medical condition; and
- * Other pertinent information that would impact on your ability to operate a commercial motor vehicle.

22. DENIAL OF WAIVERS FOR OUT-OF-STATE RESIDENTS WHO WORK IN MARYLAND: Individuals who reside in another state but work in Maryland cannot be issued an intrastate waiver or a waiver for a pre-existing medical condition. The waivers cannot be issued because Maryland cannot add restrictions to another state's driver's license.

23. FALSIFICATION OF INFORMATION: Falsifying information in the letter of application, the renewal application, or falsifying information required by this section by either the applicant or motor carrier is prohibited.



U.S. Department
of Transportation
**Federal Highway
Administration**

November 19, 1997

400 Seventh St., S.W.
Washington, D.C. 20590

Refer to: HCS-20/HPS-10

The Honorable Bill Goodling
Member, United States House
of Representatives
2020 Yale Avenue
Camp Hill, PA 17011

Dear Congressman Goodling:

Thank you for your October 8 letter to the National Highway Traffic Safety Administration on behalf of Mr. James Hawkins of Stewartstown. He is concerned with the federal rule that prohibits insulin-using diabetics from operating a commercial motor vehicle (CMV) in interstate commerce. Your letter was forwarded to the Federal Highway Administration (FHWA).

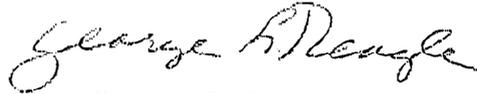
We appreciate the opportunity to respond. Section of 391.41(b)(3) of the *Federal Motor Carrier Safety Regulations* (FMCSRs) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control. This standard is absolute, providing no discretion to the medical examiner. An interstate driver whose diabetes is controlled by diet and oral medication may be certified for a period not to exceed 24 months. However, Section 391.42, *Instructions for Performing and Recording Physical Examinations*, states that the oral medication and diet must be obtainable while the driver is on duty and that the driver must remain under adequate medical supervision.

To operate in interstate commerce, drivers must hold a valid commercial driver's license (CDL) and meet the physical requirements of Part 391 of the FMCSRs, including the diabetes requirements. Many States have chosen to adopt the federal physical qualification requirements for intrastate operators, and it is up to the State to waive any of its intrastate requirements for its drivers.

Mr. Hawkins does operate in intrastate commerce in Maryland, but because he lives in Pennsylvania he must obtain a CDL there. The Maryland Department of Motor Vehicles says it can only issue waivers for intrastate operations for operators licensed in Maryland, and Pennsylvania authorities say the same. Federal regulations are not at issue here, except to the extent they were adopted by the two States for application in intrastate commerce. There is no prohibition in Federal law or regulations on one State issuing a waiver to a licensee of another State. It is entirely a matter of each State's interpretation of its respective authority.

We regret that this information could not be more favorable to your constituent, but we hope that it gives him a better understanding of our role in intrastate operations.

Sincerely yours,



George L. Reagle
Associate Administrator
for Motor Carriers

cc:
Washington Office



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

555 Walnut Street - 7th Floor
Harrisburg, PA 17101-1900

February 18, 1998

Mr. James Hawkins
14420 Curvin Drive
Stewartstown, PA 17363

Dear Mr. Hawkins:

Reference is made to your letter of October 8, 1997, to Senator Arlen Specter regarding the medical examination requirements relating to CDL holders.

As indicated in Mr. Smyser's letter of June 10, 1997, there is nothing this department can legally do in regards to your situation. First, our intrastate regulations, which merely adopt the Federal regulations, do not allow for a waiver for insulin dependent diabetics. Second, even if our regulations did provide for such a waiver, the waiver would only be valid in Pennsylvania and would not be applicable to your situation.

It appears that a change in either Maryland's regulations to allow for waivers for out-of-state drivers or a change in the Federal regulations are the only solutions to this situation. I would suggest that you work with either or both of these entities to explore possible changes at their level.

Sincerely,

A handwritten signature in cursive script that reads "Amar C. Bhajandas".

Amar C. Bhajandas, P.E., Director
Bureau of Maintenance and Operations

COMMONWEALTH OF PENNSYLVANIA
 DEPARTMENT OF TRANSPORTATION
 555 Walnut Street - 7th Floor
 Harrisburg, PA 17101-1900



June 10, 1997

Mr. James Hawkins
 14420 Curvin Drive
 Stewartstown, PA 17363

Dear Mr. Hawkins:

Reference is made to our recent telephone conversation regarding a waiver for your diabetic condition.

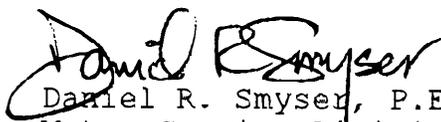
As we discussed, the Department's Intrastate Motor Carrier Safety Regulations, 67 Pa. Code Chapter 231, do require, with a limited number of exceptions, that all drivers of vehicles in excess of 17,000 pounds must pass a medical examination at least once every 2 years. The state's standards for the medical examination are an adoption of the Federal standards as contained in 49 CFR 391.41-391.45. Additionally, we have adopted the Federal waiver provisions as contained in 49 CFR 391.49 which provide that waivers may only be granted for certain conditions such as loss or impairment of a limb. Insulin dependent diabetes is not one of the conditions for which a waiver may be granted.

As such, this Department cannot grant you the waiver which you indicated your employer is requiring for the following reasons:

1. Our intrastate regulations do not provide legal authority for a waiver to be granted for your medical condition.
2. The intrastate regulations are only applicable to operations which are confined to the physical borders of Pennsylvania. As you are operating in Maryland, these regulations have no legal force or effect.

I trust this answers your questions. If you have any more questions, please contact my office at 717-787-7445.

Sincerely,


 Daniel R. Smyser, P.E., Chief
 Motor Carrier Division